

NO. 81332-9

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

**SUPREME COURT OF THE STATE OF WASHINGTON**

2008 MAY 14 P 4:45  
BY RONALD R. CARPENTER

RESIDENTS OPPOSED TO KITTITAS TURBINES ~~and~~ <sup>CLERK</sup>  
F. STEVEN LATHROP, et al.,

Petitioners,

v.

STATE ENERGY FACILITY SITE EVALUATION COUNCIL (EFSEC)  
and CHRISTINE O. GREGOIRE, Governor of the State of Washington,  
et al.,

Respondents.

---

**SAGEBRUSH POWER PARTNERS LLC'S  
APPENDIX OF RECORD**

---

Narda Pierce, WSBA No. 10923  
BENEDICT GARRATT  
POND & PIERCE, PLLC  
711 Capitol Way S., Suite 605  
Olympia, WA 98501  
(360) 236-9858

Timothy L. McMahan, WSBA No. 16377  
Erin L. Anderson, WSBA No. 23282  
STOEL RIVES LLP  
805 Broadway Street, Suite 725  
Vancouver, WA 98660  
(360) 699-5900

Darrel L. Peeples, WSBA No. 885  
325 Washington Street NE, Suite 440  
Olympia, WA 98501-1144  
(360) 943-9528  
Attorneys for Respondent Sagebrush Power  
Partners, LLC

*Residents Opposed to Kittitas Turbines and  
F. Steven Lathrop, et al.,  
v.  
State Energy Facility Site Evaluation Council (EFSEC) and  
Christine O. Gregoire, Governor of the State of Washington*

*Washington Supreme Court  
No. 81332-9*

*Sagebrush Power Partners LLC's Appendix of Record*

Exhibit	Record	Document
A	AR 12508 – 12525	Applicant's Prefiled Supplemental Direct Testimony -Witness #15: Thomas Priestley
B	AR12949-12951	[Former] Kittitas County Code Ch. 17.61A – Wind Farm Resource Overlay Zone
C	Not previously filed	Verbatim Transcript of February 22, 2008, Hearing on Motions to Certify Petitions, Certify Record and Strike Testimony – Thurston County Superior Court Cause Nos. 07-2-02080-0 and 07-2-02099-1
D	SR 855 – SR 872	Excerpts from Deposition of James O. Luce
E	SR 874- SR 877	Excerpts from Deposition of Chris Smith Towne
F	AR 12546-12565	Analysis of the Visual Resources Impacts of the Revised Kittitas Valley Wind Power Project prepared by Thomas Priestley, Ph.D., AISP/ASLA dated November 7, 2005
G	AR 10065 – 10228	Kittitas Valley Wind Power Project, Final EIS, Section 3.9, Visual Resources, February 2007

# EXHIBIT A

1                               BEFORE THE STATE OF WASHINGTON  
2                               ENERGY FACILITY SITE EVALUATION COUNCIL  
3

4 In the Matter of Application No. 2003-01:

EXHIBIT 34 SUP (TP-T SUP)

5 SAGEBRUSH POWER PARTNERS, LLC;

6 KITTITAS VALLEY WIND POWER PROJECT  
7  
8  
9

10                               **APPLICANT'S PREFILED SUPPLEMENTAL DIRECT TESTIMONY**  
11                               **WITNESS #15: THOMAS PRIESTLEY**  
12  
13

14 Q       Please state your name and business address.  
15

16 A       My name is Thomas Priestley and my business address is 155 Grand Ave. Suite 1000, Oakland,  
17 CA 94612.  
18

19 Q       Have you previously filed prepared testimony in this matter?  
20

21 A       Yes  
22

23 Q       Is this testimony given to supplement your prior testimony?  
24

25 A       Yes

EXHIBIT 34 SUP (TP-T-SUP) - 1  
THOMAS PRIESTLEY SUPPLEMENTAL  
PREFILED TESTIMONY

DARREL L. PEEPLES  
ATTORNEY AT LAW  
325 WASHINGTON ST. NE #440  
OLYMPIA, WA 98506  
TEL. (360) 943-9528 FAX (360) 943-1611  
dpeeples@ix.netcom.com



1  
2 Q. What is the specific purpose of this supplement to your prior testimony?

3  
4 A In 2005, Horizon Wind Energy (formerly Zilkha Renewable Energy) redesigned the  
5 project layout to respond to comments on project visual aspects, aesthetics, and lighting  
6 raised by the Kittitas County Commissioners, County staff, adjacent landowners, and the  
7 general public. The project as originally proposed would have entailed installation of up  
8 to 150 turbines. Under the revised layout, the number of turbines was significantly  
9 reduced, making it possible to eliminate turbines located in the areas about which the  
10 greatest levels of public concern about aesthetic impacts had been expressed.

11  
12 To assess the aesthetic effects of the revised project layout, I conducted a systematic  
13 evaluation that applied the same methodology I employed in preparing the original  
14 analysis of the project's visual impacts that was included in the Application for Site  
15 Certification and later incorporated into the DEIS issued by EFSEC. This evaluation is  
16 documented in a technical memorandum (*Analysis of the Visual Resources Impacts of the*  
17 *Revised Kittitas Valley Wind Power Project*, Thomas Priestley, PhD, November 7, 2005).  
18 As was the case with the original visual assessment, the analysis methodology I used was  
19 based on the widely accepted analysis approaches developed by Federal land  
20 management agencies and the US Department of Transportation.

21  
22 Q Would you please identify what has been marked for identification as Exhibit 34-14 (TP-14)

23  
24 A Exhibit 34-14 (TP-14) the technical memorandum entitled "*Analysis of the Visual Resources*  
25 *Impacts of the Revised Kittitas Valley Wind Power Project*" referenced above, that I authored.

1  
2 Q Is the information in this exhibit within your area of authority and /or expertise?

3  
4 A Yes

5  
6 Q Is the content of this exhibit based upon your own knowledge, or upon evidence, such as  
7 studies and reports that a reasonably prudent person in your field and expertise is  
8 accustomed to rely in the conduct of their affairs?

9  
10 A Yes.

11  
12 Q Is the content of this exhibit accurate?

13  
14 A Yes.

15  
16 Q Do you incorporate the facts and content of this exhibit as part of your testimony?

17  
18 A Yes.

19  
20 Q Do you sponsor the admission of this exhibit into evidence?

21  
22 A Yes.

23  
24 Q Please summarize the conclusions of your analysis regarding the new layout.

1 A The bottom line of my analysis of the revised project layout was that from most of the viewpoints  
2 evaluated in the original project EIS, the project's aesthetic impacts will be moderately to  
3 substantially reduced. At the time that Kittitas County held its hearings on this project in January,  
4 2006, this analysis of the revised project's aesthetic effects served as the basis for the testimony  
5 that I provided at those proceedings  
6

7 In early June 2006, Kittitas County made its final decision regarding County permitting  
8 of the Kittitas Valley Wind Power Project. I have reviewed the County record regarding  
9 the visual issues. What I have found is that for the most part that the County has  
10 concurred with me about the project's less than significant visual impacts. The one area  
11 in which the County and I disagree has to do with aesthetic and shadow flicker impacts in  
12 the area within 2,500 feet of turbines. Commissioner Huston stated a concern to a  
13 "looming" effect of turbines within 2,500 feet.  
14

15 Q Was the County's analysis as shown in the record prepared based on use of accepted  
16 visual assessment protocols that are commonly used by state and federal agencies?  
17

18 A No. As far as I could tell they used no protocols.  
19

20 Q Do you disagree with the conclusions of the county you referenced above?  
21

22 A Yes  
23

24 Q What is the basis for your disagreement?  
25

1 A Part of the reason for this disagreement relates to the County's treatment of the issue of  
2 visual sensitivity as it was presented in my original visual assessment in the ASC, and as  
3 it was repeated in the EIS prepared on behalf of EFSEC. As a part of the process of  
4 assessing the aesthetic impacts of potential change to the landscape, the standard  
5 professional approach is to document the existing visual character and quality of the  
6 landscape and its sensitivity to potential visual change. Sensitivity to visual change is  
7 usually evaluated in terms of the numbers and types of viewers in the area. Residential  
8 and certain kinds of recreational viewers are usually assumed to be the most potentially  
9 sensitive to visual alterations of the landscape. In the case of this project, a high degree of  
10 sensitivity was assigned to residences located within the foreground zone (up to ½ mile)  
11 of the proposed turbines. It is important to note that visual sensitivity is not the same as  
12 visual impact, but instead is only one of the considerations that go into the final  
13 determination of impact. In determining potential impacts of proposed projects, account  
14 is taken of a range of factors, including the degree of visibility of the new feature, the  
15 degree and nature of the visual change created, the effects on the visual character and  
16 quality of the view, and the sensitivity of the viewers. As this explanation suggests, it is  
17 incorrect to assume that the level of viewer sensitivity translates directly to the level of  
18 visual impact.

19  
20 Because of its confusion between level of viewer sensitivity and level of visual impact,  
21 the County moves very quickly to the conclusion that all turbines must be set back 2,500  
22 feet from residences. As a consequence, the County's record related to project aesthetic  
23 impacts focuses almost exclusively on the 2,500 foot setback issue to the detriment of a  
24 wider and better informed consideration of the factors determining the degree of impact.

25 A point to note here is that in its review of the findings of the ASC and EIS aesthetic

1 analyses, the County took the findings that those analyses described as "moderate to  
2 high" and has misrepresented those findings as findings of "high" impacts. From there,  
3 the County asserts that a "high impact is a significant adverse environmental impact."  
4 This assertion was made without detailed analysis or any reference to the criteria used to  
5 establish the significance of impacts under SEPA. That assertion is not based on the  
6 analysis of the EFSEC DEIS and the Addendum thereto. Building on this questionable  
7 chain of assertions, the County argues that because the places where "significant"  
8 impacts were found were places in close proximity to turbines, the only solution is to  
9 increase viewer distance from turbines through the use of 2,500 foot setbacks from all  
10 residences.

11  
12 My professional opinion is that County's insistence that all turbines must be set back  
13 2,500 feet from residences is not a sound decision. This is a rigid requirement that does  
14 not reflect the fact that in many cases, although turbines proposed as a part of the  
15 KVVWP project may be located within 2,500 of residences, they have relatively little  
16 aesthetic impact because they are situated in places where they are either barely visible or  
17 not visible at all from the residence and/or they have little or no effect on the most  
18 important views available from the residence. In response to the County's ruling related  
19 to the 2,500 foot setback issue, during the week of June 26-30, I made a thorough  
20 investigation of the residences located within 2,500 feet of proposed turbines. This  
21 investigation included a close review of maps created using a geographic information  
22 system (GIS), and both on-the-ground and helicopter-based field reconnaissance. The  
23 results of my investigation are contained in the following table and map. I have assumed  
24 a worst case scenario for the turbines with a tip height of 410 feet rather than the more  
25 likely turbine with a tip height of 367 feet.

The map below (Figure 1) indicates the boundaries of the properties included in the project site, the locations of each of the turbines proposed as part of the project, and the locations of all non-participating residences located within 2,500 feet of proposed turbines.

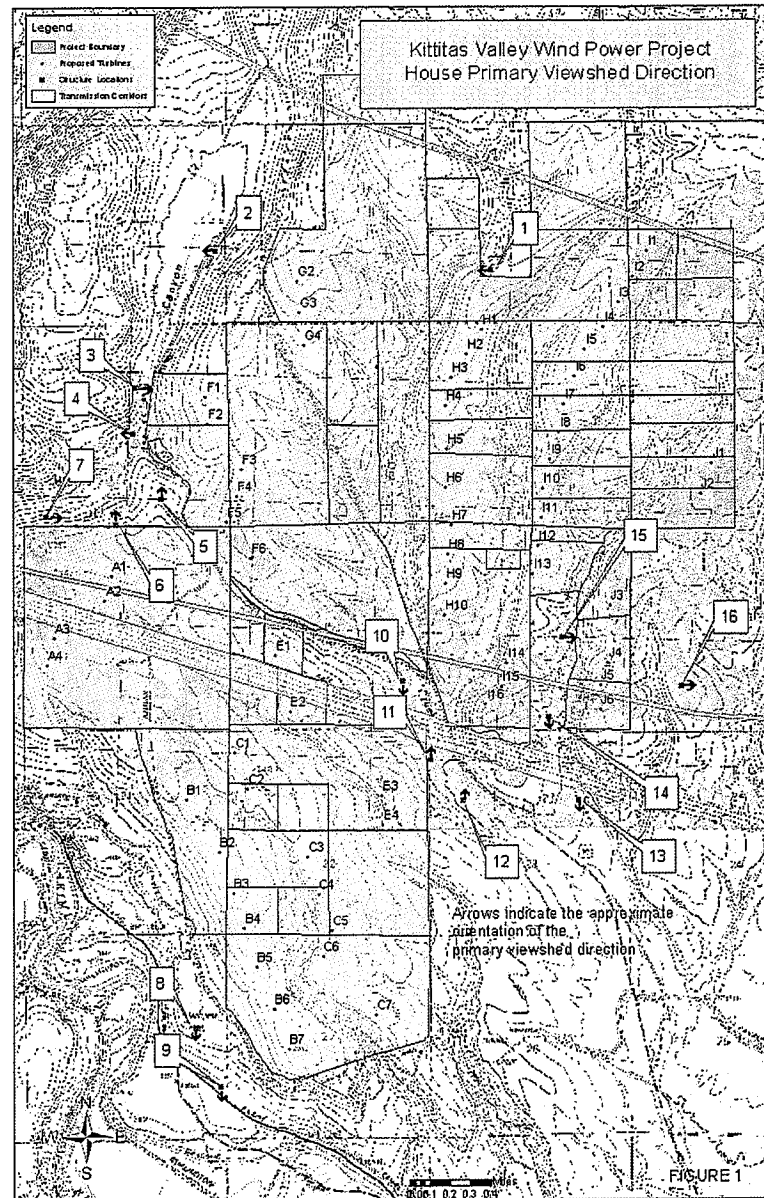


Table 1 below provides a summary of the insights gained through the map review and ground level and aerial investigation. The locations and distances of the turbines to the respective residences are approximate. For the purposes of this analysis the turbine locations are assumed to be as designated in Figure 2 of the supplemental testimony of Chris Taylor (Exhibit 20 SUP (CT-T-SUP)). The final locations are assumed to not be significantly different than as stated, but will be subject to the siting factors set out in the testimony of Andrew Young and Chris Taylor. For each residence located within 2,500 feet of a proposed turbine, note is made of the distances to turbines located within 2,500 feet, the orientation of the house, the relationship of this orientation to the turbines, and notes related to the relationship of the turbines to the residence's primary viewshed. The primary viewshed was identified by evaluating the orientation of the residence, and the orientation of the residence's major windows, porches, and decks. Table 1 also includes a notation of Distance Zone. This Distance Zone, which I will describe in more detail later in my testimony, is an indicator of the turbine's relative degree of visual dominance. For reasons that I will explain, turbines located in Zones 1 and 2 have the potential to dominate the view, while turbines located in Zone 3 are set far enough back into the scene that they would not be considered to be visually dominant.

**TABLE 1 – SUMMARY OF RELATIONSHIPS OF RESIDENCES  
TO PROPOSED TURBINES LOCATED WITHIN 2,500 FEET**

Residence Map ID Reference	Turbine	Approximate Distance	Distance Zone	Orientation of House	Orientation of Residence in Relation to Turbine	Viewshed Notes
1	H1	1,590	2	West	Side	Turbine not in primary viewshed
	H2	2,280	3	West	Side	Turbine not in primary viewshed
2	G2	2,290	3	West	Away	View blocked by Terrain
3	F1	1,830	3	East	Towards	View partially blocked by Trees
	F2	2,080	3	East	Towards	View partially blocked by Trees

1	4	F1	2,100	3	West	Away	Turbine not in primary viewshed
2		F2	1,920	3	West	Away	Turbine not in primary viewshed
3	5	F2	2,270	3	North	Towards	Clear View - 2,267'
4		F3	2,190	3	North	Side	Turbine not in primary viewshed
5		F4	1,940	3	North	Side	Turbine not in primary viewshed
6		F5	1,770	3	North	Side	Turbine not in primary viewshed
7	6	A1	2,280	3	North	Away	Turbine not in primary viewshed
8		A1	1,290	2	Northwest	Away	View largely blocked by Terrain (only top of turbine blades have the potential to be visible)
9		A2	2,010	3	Northwest	Away	View largely blocked by Terrain (only top of turbine blades have the potential to be visible)
10							View substantially blocked by Trees (only top of turbine blades have the potential to be visible)
11	7	A1	2,350	3	West	Side	Turbine not in primary viewshed
12	8	B5	2,240	3	South	Away	Turbine not in primary viewshed
13		B6	2,090	3	South	Away	Turbine not in primary viewshed
14		B7	2,490	3	South	Away	Turbine not in primary viewshed
15	9	B6	2,450	3	South	Away	View largely Blocked by Trees & Terrain
16		B7	2,050	3	South	Away	View largely Blocked by Trees & Terrain
17	10	H10	2,290	3	Southeast	Away	Turbine not in primary viewshed
18		I16	2,240	3	South	Side	Turbine not in primary viewshed
19	11	E3	1,570	2	North	Away	Turbine not in primary viewshed
20		E4	2,100	3	North	Away	turbine not in primary viewshed
21		I16	2,030	3	North	Towards	View through Transmission Lines
22	12	E3	2,130	3	North	Side	Turbine not in primary viewshed
23		E4	2,190	3	North	Side	Turbine not in primary viewshed
24	13	J6	2,400	3	Southwest	Away	View Blocked by Trees, Terrain & Transmission Lines
25	14	I14	1,770	3	Southeast	Away	Turbine not in primary viewshed
		I15	1,670	3	South	Away	Turbine not in primary viewshed
		J4	2,100	3	South	Away	Turbine not in primary viewshed
		J5	1,580	2	South	Away	Turbine not in primary viewshed

EXHIBIT 34 SUP (TP-T-SUP) - 9  
 THOMAS PRIESTLEY SUPPLEMENTAL  
 PREFILED TESTIMONY

DARREL L. PEEPLES  
 ATTORNEY AT LW  
 325 WASHINGTON ST. NE #440  
 OLYMPIA, WA 98506  
 TEL. (360) 943-9528 FAX (360) 943-1611  
 dpeeples@ix.netcom.com



1		J6	1,330	2	South	Away	Turbine not in primary viewshed
2	15	I13	1,850	3	East	Away	Turbine not in primary viewshed
3		I14	1,610	2	East	Away	Turbine not in primary viewshed
4		I15	2,010	3	East	Away	Turbine not in primary viewshed
5		J3	1,490	2	East	Towards	Clear View - 2,011'
6		J4	1,350	2	East	Towards	Clear View - 1,353'
7		J5	1,580	2	East	Towards	Clear View - 1,583'
8		J6	2,080	3	East	Towards	Clear View - 2,078'
9	16	J4	2,030	3	East	Away	No View, Cargo Containers, no windows
10		J5	2,130	3	East	Away	No View, Cargo Containers, no windows
11		J6	2,300	3	East	Away	No View, Cargo Containers, no windows

One of the basic findings of this detailed investigation is that although the county had stated that there are twenty-seven residences of nonparticipating property owners located within 2,500 feet of proposed turbines (statement by Commissioner David Bowen, May 3, 2006, page 10, line 24 of transcripts, Exhibit 6 of Second Request for Preemption), there are in fact no more than 16 houses that lie within 2,500 feet of proposed turbines.

As the summary provided in Table 1 indicates, the detailed on-the-ground and aerial investigations revealed that in many cases the turbines that would be located within 2,500 feet of a house would not be prominently visible from the houses because they may be screened to varying degrees by intervening topography and/or because they were not located within the views from the residence. For example, in the Bettas Road area, a number of the residences are oriented toward the northwest to capture the views toward the Stuart Range, placing the turbine sites to the backs of the residences and outside of their primary viewsheds.

1 Specifically, of the 16 residences referred to above, views from one of the residences  
2 toward turbines within 2,500 feet would be completely screened by the intervening  
3 topography. From five additional residences, views toward turbines located within 2,500  
4 feet would be substantially screened by topography and vegetation. In the case of seven  
5 of the 16 residences, the turbines that would be sited within 2,500 feet would not be  
6 located within the residence's primary viewshed. In views from three of the residences,  
7 some of the turbines that would be sited within 2,500 feet would be located outside of the  
8 primary viewshed of the residence, while others would be located within it. In cases  
9 where turbines would be readily visible in the views from residences, the question  
10 remains how much of a setback between turbines and residences is required to protect the  
11 residential view from being visually dominated by the presence of the turbine. This is the  
12 "looming" concern as stated by the BOCC referenced above. Although the County states  
13 that the 1,320 foot setback (1/4 mile) proposed by the Applicant isn't enough and insists  
14 on a setback of 2,500 feet, it hasn't provided any real evidence to support these  
15 assertions. A 1/4 mile setback should be adequate to mitigate against any potential affect  
16 of a turbine visually dominating the view.

17  
18 The County's assertion that a setback of 1/4 mile is not adequate to protect residential  
19 views from being visually dominated by turbines is not supported by the actual turbine  
20 views that can be observed at existing wind power projects. The visual evidence  
21 observable at these sites indicates that for turbines with dimensions generally similar to  
22 those proposed for the Kittitas Valley Project, a 1/4 mile setback would be adequate to  
23 prevent turbines from visually dominating the view. This relationship can be seen in the  
24 following photos of existing turbines at the Klondike Wind Power Project in Sherman  
25 County, Oregon. The turbines at the Klondike site are GE 1.5 MW units that are

1 mounted on towers with a hub height of 80 meters, and that use rotors with a diameter of  
2 77 meters. The height to the tip of the blade 389 feet. Under my direction, photos were  
3 taken of a turbine at this site at a distance equivalent to 4 times the turbine's height,  
4 which in this case, was 1, 175 feet, and at 1320 feet and 2,500 feet. All photos were  
5 taken within a few feet of that elevation, based on the readings provided by a Garmin  
6 GPS unit. The accuracy of the viewing distances was established by using a range finder  
7 and the Garmin GPS. The photos were taken with a 35 mm camera with the equivalent  
8 of a 50 mm lens to produce an image that is comparable to what is seen by the human  
9 eye. Review of Figure 2 indicates that at a viewing distance of four times the height to  
10 the tip of the blade, (which in this case is a little under 1/4 mile), the entire turbine is  
11 contained within the field of view, and because it is entirely contained within the area  
12 taken in by the human eye, it is less than dominant in the view. Review of Figures 3  
13 (viewing distance of 1,320 feet) and Figure 4 (viewing distance of 2,500 feet) indicates  
14 that at increasing distances, the turbine continues to be contained within the field of  
15 view, and similar to the 4-times-the-height-distance-view seen in Figure 2, the turbine is  
16 less than dominant in the view.

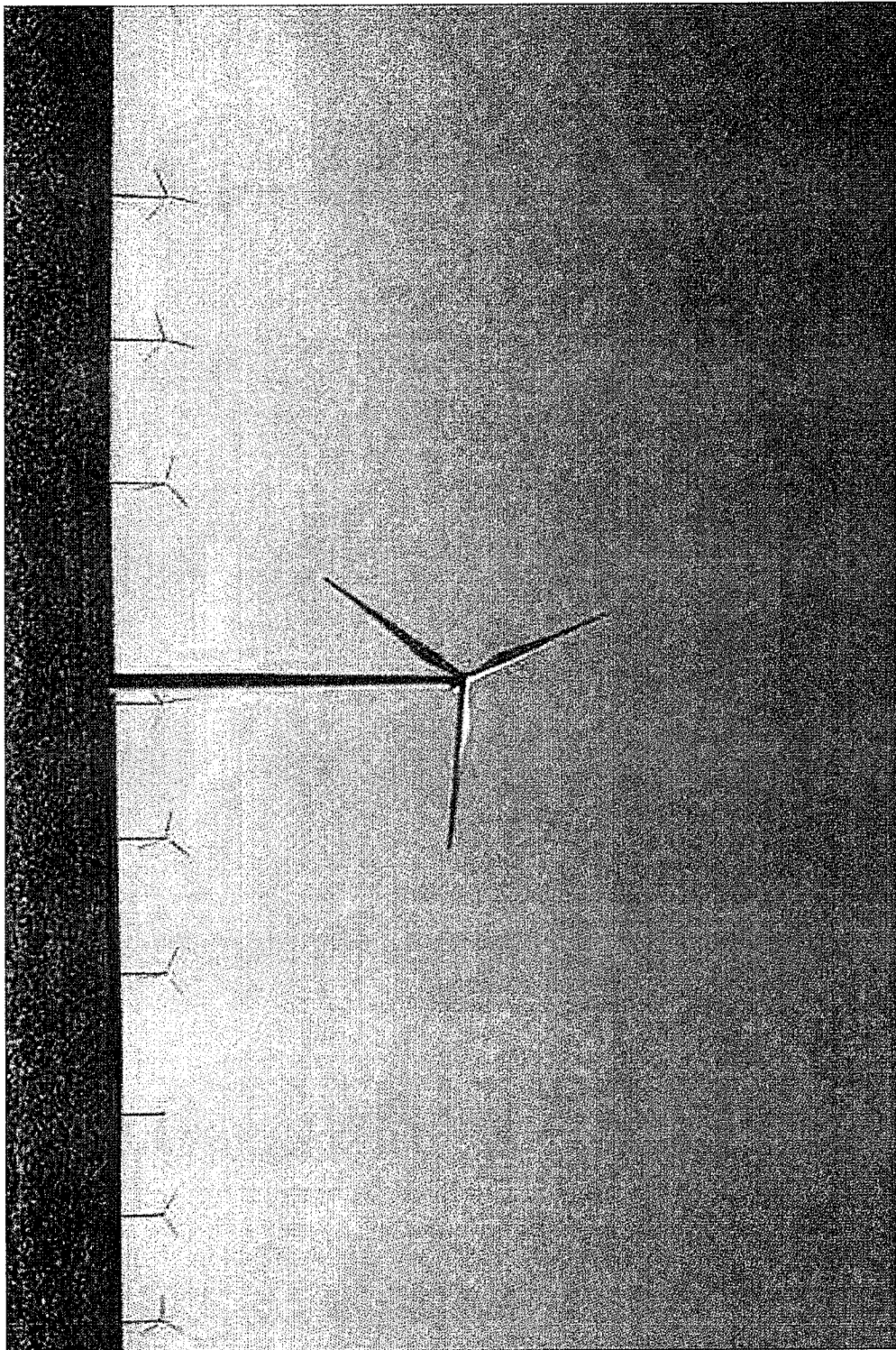


Figure 2: Klondike II 1,175'

EXHIBIT 34 SUP (TP-T-SUP) - 13  
THOMAS PRIESTLEY SUPPLEMENTAL  
PREFILED TESTIMONY

DARREL L. PEEPLES  
ATTORNEY AT LAW  
325 WASHINGTON ST. NE #440  
OLYMPIA, WA 98506  
TEL. (360) 943-9528 FAX (360) 943-1611  
dpeeples@ix.netcom.com

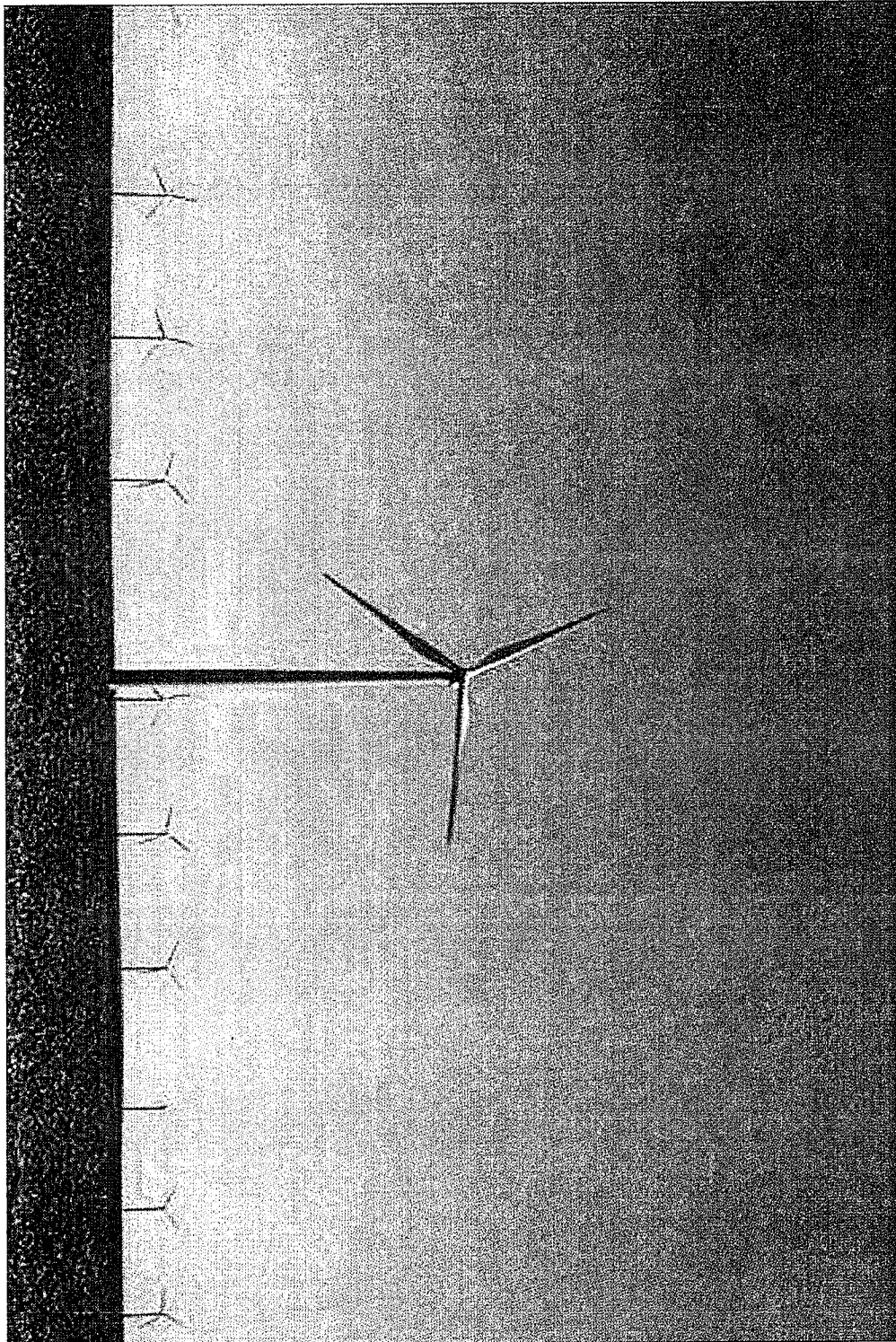


Figure 3: Klondike II 1,320'

EXHIBIT 34 SUP (TP-T-SUP) - 14  
THOMAS PRIESTLEY SUPPLEMENTAL  
PREFILED TESTIMONY

DARREL L. PEEPLES  
ATTORNEY AT LW  
325 WASHINGTON ST. NE #440  
OLYMPIA, WA 98506  
TEL. (360) 943-9528 FAX (360) 943-1611  
dpeeples@ix.netcom.com

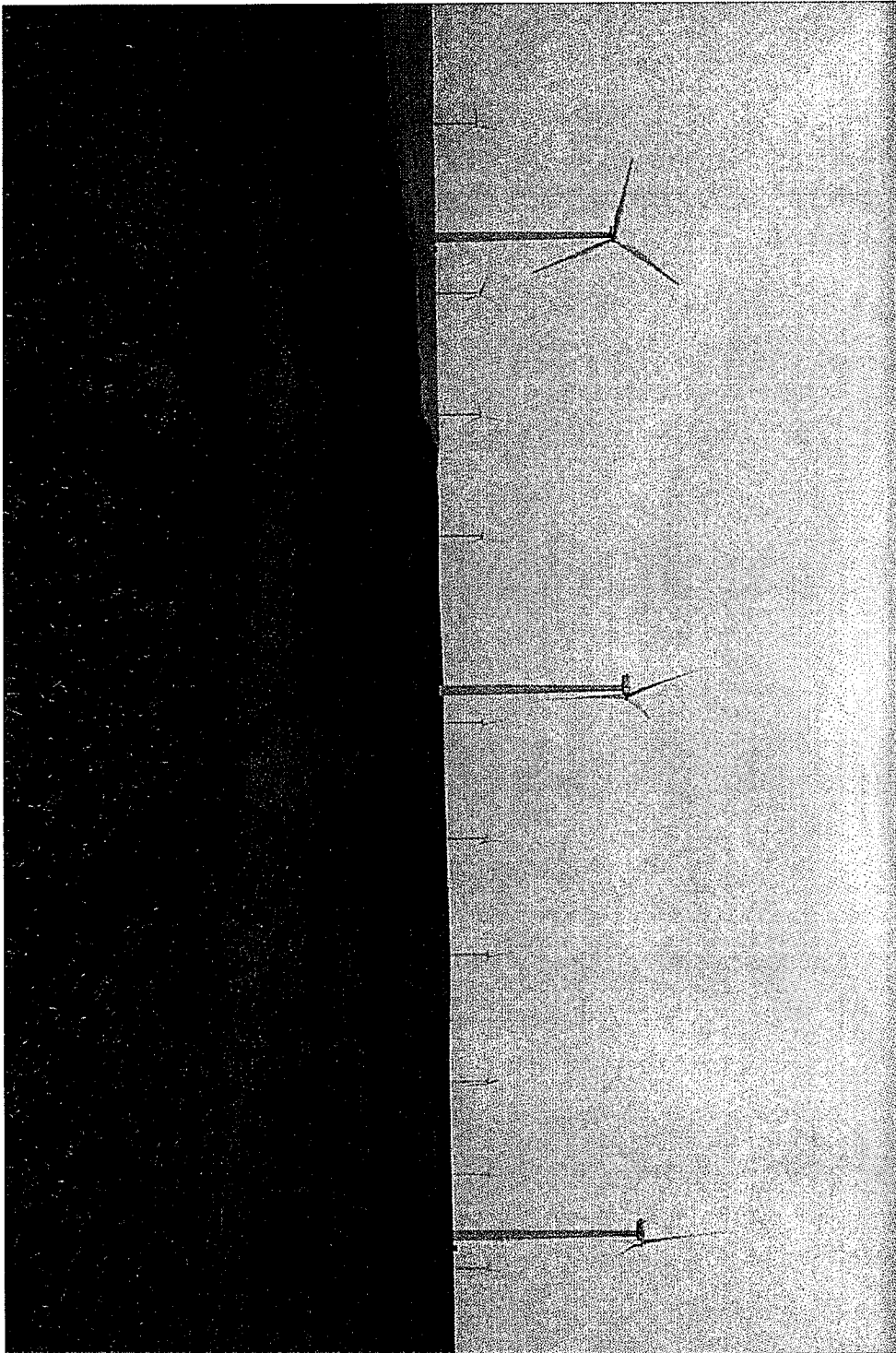


Figure 4: Klondike II 2,500'

EXHIBIT 34 SUP (TP-T-SUP) - 15  
THOMAS PRIESTLEY SUPPLEMENTAL  
PREFILED TESTIMONY

DARREL L. PEEPLES  
ATTORNEY AT LW  
325 WASHINGTON ST. NE #440  
OLYMPIA, WA 98506  
TEL. (360) 943-9528 FAX (360) 943-1611  
dpeeples@ix.netcom.com



1 Further the minimum of ¼ mile from non-participating residences proposed by the  
2 Applicant has a very sound basis in research literature. The visual evidence from the  
3 Klondike Project supporting the adequacy of a ¼ mile setback for turbines in the size-  
4 class proposed for the Kittitas Valley Project is consistent with the principles related to  
5 scalar relationships and perceptions of visual dominance found in the environmental  
6 design literature. For the Kittitas Valley Project, the Applicant's proposed ¼ mile  
7 setback from non-participating residences is compatible with the principles the design  
8 research literature has established that relate the relative dominance of structures to ratios  
9 of the height of the structure to the distance from which it is viewed<sup>1</sup>. This research has  
10 determined that the "normal" field of view, the area that can be seen without moving the  
11 eyes or head, takes in the area defined by a viewing angle of 12 degrees above and below  
12 the horizon. Thus, when a person is far enough away from a structure to see it at an angle  
13 of 12 degrees or less, the structure's entire height is fully contained within their overall  
14 view. When a person is closer to the structure and views it at angles between 12 degrees  
15 and 27 degrees, seeing the structure's entire height requires the eyes to move, but does  
16 not require head movement. When a person is even closer and views the structure at  
17 angles of 27 degrees or greater, both the head and eyes have to move in order to see the  
18 structure's full height. The angle at which a structure is viewed can be related to the ratio  
19 between its height and its distance from the person doing the viewing. When the viewing  
20 distances is equal to the height of the structure (height-distance ratio of 1:1), the viewing  
21 angle is 45 degrees. When the viewing distance is two times the height of the structure  
22 (height-distance ratio of 1:2) the viewing angle is 23 degrees. When the viewing distance  
23  
24

25 <sup>1</sup> This research, which was carried out by Maertens in Germany in the nineteenth century, was applied in and influential article published Hans Blumenfeld in 1953, and was used more recently by Weber (1984) as the basis for the development of principles of scale for architecture and environmental design.

1 is three times the height (height-distance ratio of 1:3), the viewing angle is 18 degrees  
2 and when the viewing distance is four times the height, the viewing angle is 12 degrees.  
3

4 This approach can be used to measure a structure's relative sense of dominance to the  
5 immediate surrounding area. The height-distance relationships have been classified into  
6 three zones that reflect the relative degree to which a structure's height dominates its  
7 surroundings. Zone 1 is when a view is very close (at height-distance of 1:2 or less). The  
8 structure will fill the field of vision and the viewer may feel insignificant compared to the  
9 size of the structure. In Zone 2 where the height-distance ratios range from 1:2 to 1:4, the  
10 structure will dominate the view but begins to become part of the greater landscape. In  
11 Zone 3 where the height-distance ratio is 1:4 or more the structure is entirely contained  
12 within the normal field of view and becomes a subordinate part of the overall scene.  
13

14 The Zones were calculated for the houses and respective turbines and shown in Table 1  
15 above. The calculations assumed a worst case maximum turbine height of 410 feet  
16 (rather than the most likely turbine to be used with height of 367 feet) to the tip of the  
17 blade. As shown in the table all but four houses are in Zone 3. All houses in Zone 2 are  
18 the upper range of Zone 2 and all but one house is oriented away from the turbines. If the  
19 most likely turbine size is used, only one house, oriented away from the turbine would be  
20 in Zone 2  
21

22 By insisting that all turbines be set back 2,500 feet from houses to mitigate for a  
23 perceived "looming" visual impact, the County would place unnecessary restrictions on  
24 turbines sited in areas where they would have relatively little impact on residential views.

25 As can be seen from this analysis, the effect on the views to houses with turbines within



1 2,500 feet is not as stated by the County. Instead of the 27 houses assumed to be affected  
2 there are actually only eleven that would have other than an insignificant view at the most  
3 due topography and screening. Of these eleven houses, the primary viewshed of all but  
4 one is not towards the turbines within 2,500 feet. Further, the view of the turbine ceases  
5 to dominate ("looming") at about 1,640 feet, (Zone 3). The degrees to which visual  
6 impacts are adverse significant depend on the viewer's location and sensitivity and the  
7 impact on view quality. Because of the fact that the primary viewsheds of houses that  
8 can actually see the turbines within 2,500 feet are overwhelmingly away from or not  
9 directly towards the turbines and because most of the turbines are located in Zone 3, the  
10 visual impacts are less than significant. For projects like the Kittitas Valley Wind Power  
11 Project, whose siting and design have shaped its overall visual impacts, any visual impact  
12 that might be identified as affecting small numbers of viewers must be evaluated in the  
13 context of the fact that on the whole, the projects visual impacts are relatively low.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# EXHIBIT B

<b>EVALUATION COUNCIL</b>	
Docket No.	203-01
Received	by affidavit
Rejected	
Exhibit No.	50.5

EXHIBIT-50-5(CW-5)

17.61.040 - 17.61A.010

G. The operation of radio towers and special utilities identified within this chapter may necessitate unusual parcel configurations and/or parcel sizes. Such parcels:

1. Need not conform with applicable zoning requirements; provided, they comply with the procedures provided in KCC Title 16, Subdivisions, and so long as used for a utility or special utility;
2. Are not eligible for any other use or any rights allowed to nonconforming lots in the event the utility or special utility use ceases;
3. Shall continue to be aggregated to the area of the parent parcel for all other zoning and subdivision requirements applicable to the parent parcel. (Ord. 2001-12 (part), 2001: Ord. 2000-06 (part), 2000; Ord. 99-14 (part), 1999: Ord. 98-17 (part), 1998).

**17.61.040 Communication facilities - Administrative review - General requirements.** A. Communication facilities may be authorized by the planning director as an administrative conditional use in all zoning districts, pursuant to the criteria and procedures of this chapter and KCC Title 15A. An administrative conditional use permit is not required for the operation of amateur or noncommercial communication equipment as defined by FCC regulations under Part 95D and Part 97 CFR (i.e., citizen band, ham radio).

B. Construction of all improvements shall be completed within one year of the date of permit issuance except as provided for in subsections E and F of this section.

C. The lot line setback requirements of this title may be waived by the planning director, in order to improve the facilities' reception and/or transmission capabilities or to achieve greater levels of audible or visual screening than that which would be available by using the applicable zone's yard requirements.

D. Communication facilities shall be designed to blend with existing surroundings; provided, no conflicts exist with existing Federal Communications Commission and the Federal Aviation Administration regulations relating to aircraft safety. This should be achieved through the use of compatible colors and materials, and alternative site placement to

allow the use of topography, existing vegetation or other structures to screen the proposed transmission support structure from adjacent lands.

E. The co-location of antennas on both existing and proposed transmission structures is encouraged. Communication antennas shall be permitted outright in all zoning districts provided the following:

1. An antenna shall not extend more than six feet horizontally from any structure to which it is attached.
2. An antenna shall not extend vertically more than 15 feet above the uppermost portion of the structure to which it is mounted or attached.

F. Modifications to, including the expansion of, existing approved communication facilities shall be outright permitted; provided, there is no increase in the height of the transmission tower. For purposes of this subsection, "transmission tower" means a pole or lattice-work structure specifically designed and intended to support antenna and related communication equipment. (Ord. 2001-12 (part), 2001: Ord. 2000-06 (part), 2000).

## Chapter 17.61A

### WIND FARM RESOURCE OVERLAY ZONE.

#### Sections:

**17.61A.010 Legislative findings, purpose and intent.**

**17.61A.020 Definitions.**

**17.61A.030 Development uses, requirements, and restrictions.**

**17.61A.040 Approvals required for wind farm resource overlay zone.**

**17.61A.010 Legislative findings, purpose and intent.** The purpose and intent of this chapter is to establish a process for recognition and designation of properties located in areas of Kittitas County suitable for the location of wind farms, to protect the health, welfare, safety, and quality of life of the general public, and to

ensure compatible land uses in the vicinity of the areas affected by wind farms. (Ord. 2002-19 (part), 2002).

**17.61A.020 Definitions.** The following definitions shall be used in conjunction with the administration of this chapter:

A. "Wind farm" means a single wind turbine exceeding 120 feet in height above grade or more than one wind turbine of any size proposed and/or constructed by the same person or group of persons on the same or adjoining parcels.

B. "Wind turbine" means any machine used to produce electricity by converting the kinetic energy of wind to electrical energy. Wind turbines consist of the turbine apparatus and any other buildings, support structures or other related improvements necessary for the generation of electric power. (Ord. 2002-19 (part), 2002).

**17.61A.030 Development uses, requirements, and restrictions.** All listed permitted uses in the underlying zoning district of this overlay zone are permitted. All listed conditional uses in the underlying zoning district of this overlay zone are subject to conditional use permit process and review. Wind farms are a permitted use in a wind farm resource overlay zoning district, subject to the additional approval requirements and restrictions set forth in KCC 17.61A.040. (Ord. 2002-19 (part), 2002).

**17.61A.040 Approvals required for wind farm resource overlay zone.** A. A wind farm may be authorized by the county only through approval of a wind farm resource development permit in conjunction with approval by the board of county commissioners of a development agreement as authorized by Chapter 15A.11 KCC, Development Agreements, and RCW 36.70B.170 through 36.70B.210. Consistent with KCC 15A.11.020(B) and RCW 36.70B.170, the development agreement approved by the board of county commissioners must set forth the development standards applicable to the development of a specific wind farm, which may include, but are not limited to:

1. Densities, number, size, setbacks, and location of turbines;

2. Mitigation measures and such other development conditions as deemed appropriate by the board of county commissioners to be necessary including measures to protect the best interests of the surrounding property or neighborhood or the county as a whole; and

3. Other development standards including those identified in KCC 15A.11.020(E) and RCW 36.70B.170(3).

B. Required Applications/Approvals. In addition to approval of a wind farm resource development permit and a development agreement as set forth in subsection A of this section, a wind farm shall require the following approvals from the county:

1. A site-specific amendment of the comprehensive plan land use designation map to wind farm resource overlay district (the subarea planning process described in Chapter 1 of the county comprehensive plan and Chapter 15B.03 KCC, Amendments to Comprehensive Plan, may be used if deemed appropriate by the applicant and county);

2. A site-specific rezone of the county zoning map to wind farm resource overlay zoning district pursuant to Chapter 17.98 KCC, Amendments.

C. The approvals by the board of county commissioners set forth in subsections A and B of this section shall only be made if it determined that:

1. The proposal is essential or desirable to the public convenience;

2. The proposal is not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood; and

3. The proposed use at the proposed location(s) will not be unreasonably detrimental to the economic welfare of the county and it will not create excessive public cost for facilities and service.

D. A comprehensive plan amendment or subarea plan for a wind farm resource overlay district must be processed by the county concurrent with the rezoning application, development

permit, and development agreement required for approval of a wind farm. (Ord. 2002-19 (part), 2002).

## Chapter 17.62

### PUBLIC FACILITIES PERMITS

#### Sections:

- 17.62.010 Definitions.
- 17.62.020 Purpose.
- 17.62.030 Procedures.
- 17.62.040 Decision criteria.
- 17.62.050 Minimum lot sizes.
- 17.62.060 Appeals.

17.62.010 Definitions. A. "Public facility" means the capital improvements and systems of transportation, law enforcement, fire protection, and recreational facilities (i.e., parks and playgrounds). Public facilities may be sited in any zoning, classification, subject to the review and approval requirements of this chapter.

B. "Public facility permit" means a written decision by the planning department authorizing a public facility use to locate at a specific location. (Ord. 2002-03 (part), 2002).

17.62.020 Purpose. The purpose of this chapter is to establish decision criteria and procedures for the permitting of public facilities and to provide coordinated review of the proposed project. Certain public facilities provide necessary services to other uses but are deemed unique due to factors such as siting criteria, size,

# EXHIBIT C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

---

RESIDENTS OPPOSED TO KITTITAS	)	
TURBINES and F. STEVEN LATHROP,	)	
	)	
Petitioners,	)	
	)	
vs.	)	SUPERIOR COURT NOS.
	)	07-2-02080-0, 07-2-02099-1
STATE ENERGY FACILITY SITE	)	
EVALUATION COUNCIL and CHRISTINE	)	
O. GREGOIRE, GOVERNOR of the	)	
STATE of WASHINGTON,	)	
	)	
Respondents.	)	

---

KITTITAS COUNTY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
CHRISTINE O. GREGOIRE, GOVERNOR	)	
of the STATE of WASHINGTON,	)	
et al.,	)	
	)	
Respondents.	)	

---

THE HONORABLE RICHARD D. HICKS PRESIDING, DEPARTMENT 4

---

Motions to certify petitions, certify record and strike  
testimony

February 22, 2008  
2000 Lakeridge Drive SW  
Olympia, Washington

Court Reporter  
Ralph H. Beswick, CCR  
Certificate No. 2023  
1603 Evergreen Pk Ln SW  
Olympia, Washington

A P P E A R A N C E S

For EFSEC  
and Governor Gregoire: Kyle J. Crews, AAG  
7141 Cleanwater Drive SW  
Olympia, WA 98504-0108

For Horizon Wind Energy:  
and Sagebrush Power Timothy L. McMahan  
Partners Stoel Rives, LLP  
805 Broadway, Suite 725  
Vancouver, WA 98660

For Kittitas County: Neil A. Caulkins, DPA  
Kittitas County Prosecutor's Office  
205 West 5th Avenue, Room 213  
Ellensburg, WA 98926

For Residents Opposed to  
Kittitas Turbines and James C. Carmody  
Steven Lathrop: Velikanje Halverson, PS  
PO Box 22550  
Yakima, WA 98907



\*\*\*\*\*

THE COURT: Number ten, Residents Opposed to  
Kittitas Turbines versus State Energy Site Evaluation.

The first thing I want to make sure I've covered, and it's something I should have discovered earlier by my own standards and didn't, and that is that last year work was being done for me that isn't yet finished by the attorney by the name of Mark Wheeler, the firm of Wheeler and Peternell last year merged in the firm of Bean and Gentry, and even though I saw Mr. Gentry at the initial hearing here, it didn't dawn on me -- he didn't argue or anything, he just was watching, but I should be skookum enough to realize he was involved by looking at the pleading papers, and it didn't dawn on me to mention it at that time so I apologize. But I e-mailed everybody when I saw a brief from him come in and asked everybody under the code of judicial conduct to send me a written remittal or ask me to step down if you felt it was necessary. I sent this out in writing. I have received e-mails back from everybody that I should continue on this, and so even though I'm going to file those, I also wanted to say something on the public record about it. It's completely unrelated to this, and I don't think I need to say any more.

All right. It's difficult to know where to start.

1           There's the motion to certify the record. There's a  
2           motion to take more depositions. There's a motion to  
3           strike. I guess I want to let everybody speak here  
4           because these all are interrelated. I'm not sure that  
5           there's necessarily a preferred order. So let me think.  
6           Ordinarily the moving party would be the people who want  
7           the record certified, but here the people asking for  
8           relief insofar as the ability to take further discovery  
9           or hold a live testimonial hearing are the other side,  
10          but the answer to both those questions are so  
11          intertwined I'm a little flummoxed what the best  
12          procedure would be here. Seeing nobody jumping up and  
13          waving their hand to help me out --

14                 MR. CARMODY: I'll take a shot at it.

15                 MR. McMAHAN: Your Honor, maybe if I can just  
16                 address the threshold procedural question on the motion  
17                 to strike to clear the air a little bit on that one.

18                 THE COURT: All right.

19                 MR. McMAHAN: So for the record, Tim McMahan,  
20                 Stoel Rives law firm here on behalf of Horizon Wind  
21                 Energy and Sagebrush Power Partners. We filed a motion  
22                 to strike some declarations and brief, and I want to --  
23                 just to clear this up a little bit, I am withdrawing  
24                 that motion to the extent that the declaration -- to the  
25                 extent this court considers those declarations in

1 evidence not to be new evidence per se. I do just ask  
2 that the Court consider the objections made in that  
3 motion as to the weight appropriate and context of  
4 what's been asked of you, but in terms of asking they be  
5 literally stricken from the record, I guess I'm not so  
6 comfortable with a ruling on that having read the -- you  
7 know, all the pleadings, but I do think what we have  
8 raised does go to the weight that ought to be  
9 appropriately accorded.

10 THE COURT: Is this motion primarily the one  
11 regarding what might have been claimed at one time as  
12 attorney-client privilege?

13 MR. McMAHAN: No, that's the state's motion. So  
14 our motion has to do with the declarations of Calkins,  
15 the declaration of Johnson and the briefing with regard  
16 to that.

17 THE COURT: To shorten this up, you're  
18 withdrawing it. I would deny that motion and also the  
19 state's motion regarding the attorney-client  
20 communication which I think was published when they  
21 disclosed the document pursuant to the Public Records  
22 Act, and I think the general rule would be if you  
23 published what would otherwise be a privileged  
24 communication, then you've lost its protection. So the  
25 publishing of it, even if it was inadvertent, I think

1           it loses its right to being privileged so I would not  
2           grant the motion to strike that either.

3           MR. McMAHAN: So I hope that clears it up a  
4           little bit.

5           THE COURT: It does. Thank you. So I know  
6           where I want to go on this. I just didn't know the  
7           order to do it.

8           And counsel?

9           MR. CARMODY: Maybe I shouldn't say anything,  
10          but I will. Thank you, Your Honor. My name's James  
11          Carmody. I represent the Petitioner Residents Opposed  
12          to Kittitas Turbines.

13          Without jumping ahead and guessing what your process  
14          would be, what seems logical to me is the statutory  
15          scheme outlines a process, and the question that has  
16          been raised by the state and by the respondents is  
17          whether that process should be cut off at this point  
18          with the record being certified to the Supreme Court or  
19          whether there ought to be additional testimony and  
20          fact-finding by the trial court on that. And so with  
21          that sort of framework in mind, it has been our thought  
22          that a logical way to proceed would be to have the state  
23          and the respondent proceed with their arguments on the  
24          certification of the record as it sits now and then we  
25          would respond to that.

1 THE COURT: All right.

2 MR. CARMODY: Would be at least our suggestion.

3 THE COURT: That's not unreasonable. And it is  
4 a logical way to do this. We're going to get to every  
5 issue, and after looking this all over, I don't think  
6 it's very clear. The overall intent seems to me is to  
7 follow the legislature's directive to the extent we can.  
8 There is some troublesome language in the statute, and I  
9 think subject to more than one interpretation, and on  
10 its face it seems clear enough, but I've done some  
11 independent research in a paper that's unpublished in a  
12 law review, but which I presented at a continuing legal  
13 education seminar, so it is published in a limited way,  
14 that deals with what is a finding of fact and what is a  
15 conclusion of law and what's the distinction between  
16 them, and I'm going to say some more about that later  
17 relying primarily on an article by Professor Jaffe in  
18 the Harvard Law Review. But before getting to that, let  
19 me invite those who seek certification, the state, and  
20 the private sector parties, and then we'll listen to the  
21 county's response.

22 MR. CREWS: Your Honor, Kyle Crews, assistant  
23 attorney general. We are seeking certification as we  
24 made that motion back in December because we feel that  
25 the record is complete on its face under the APA and

1           under 140. Everything that you need to send this up to  
2           the Supreme Court, the 16,000-page-plus record is there.  
3           I think we could have spent this last two months better  
4           served if we had gone through that record and designated  
5           certain papers on stipulation what we were going to send  
6           to the Supreme Court. But be that as it may, we've gone  
7           forward with this. The Court has the transcript of its  
8           proceedings December 7th of what it was looking for, and  
9           we followed through with that. The depositions of James  
10          Luce and Chris Smith Towne were taken. You can see the  
11          extent of that, the cross-examination under 140. It  
12          allows you to order more testimony.

13                The case law in this state allows that -- this is the  
14          case of *Wildman versus Taylor*, 46 Washington Appellate  
15          546, 731 P.2d 541 (1987). It allows -- it says that  
16          testimony is defined as: "Evidence given by a competent  
17          witness under oath or affirmation; as distinguished from  
18          evidence derived from writings, and other sources.  
19          Testimony is a particular kind of evidence that comes to  
20          a tribunal through live witnesses speaking under oath or  
21          affirmation..." And I'm quoting Black's Law Dictionary.  
22          And that's exactly what was what was done in this case.  
23          We have James Luce and Miss Chris Smith Towne --

24                   THE COURT: So your position is that to the  
25          extent testimony's required, that is testimony.

1 MR. CREWS: That is testimony. And that has  
2 been well briefed, and I think in my co-counsel's brief,  
3 went through step by step what the allegations of bias  
4 and appearance of fairness, all those things, all those  
5 e-mails that were selectively put out by the county  
6 until the original December 7th briefing and shown that  
7 there's nothing here. I remember saying something to  
8 the effect of Pandora's box -- this would open a  
9 Pandora's box. That denotes something that you find  
10 something negative at the end of that. This is more  
11 like an empty cupboard from Mrs. Hubbard. There's  
12 nothing here down that road. And they were extensively  
13 deposed and nothing is -- to show that there was any  
14 impropriety, bias, prejudgment.

15 These were people on a council, the EFSEC council,  
16 specifically James Luce, who have strong opinions, and I  
17 think I did quote Justice Frankfurter to the extent  
18 that, you know, these people that are appointed to  
19 these, you know, have opinions. And they're not blank  
20 slates. They're not juries that come in to judge a  
21 criminal case. These are people that have specific  
22 opinions.

23 The statutory make-up of EFSEC grants the ability to  
24 appoint the different agencies, and each one carries  
25 different expertise. The deposition of Chris Smith

1 Towne specifically shows her enormous background in the  
2 area of SEPA and water law and other things that would  
3 be, you know, highly regarded for her discussions and  
4 deliberations on any kind of EFSEC matter. That's what  
5 these were. These were deliberations between parties  
6 that came out, some of them selectively came out through  
7 a public disclosure request, and when you start seeing  
8 the whole picture, you see that there was no  
9 prejudgment, no bias. The *ex parte* conversations that  
10 were had were not in regard to Kittitas Valley; they  
11 were a part of Mr. Luce's general abilities and duties  
12 to communicate with his -- to the Governor, to the  
13 Governor's staff, to key players in the energy field in  
14 the state of Washington, and these things were also part  
15 and parcel of the normal way of doing business with  
16 EFSEC.

17 When you look at 140 -- and I can see that, you know,  
18 the judge -- Your Honor understands that this isn't the  
19 most well written. It's supposed to be read in harmony  
20 with the APA, and you have the cases of -- the *Motley*  
21 case. You have the case of -- that you're well aware  
22 of, the *Nationscapital* case that say, you know, you can  
23 only go so far in going outside the record to show bias,  
24 and when you look at the depositions and declarations of  
25 the parties at this time, you don't find anything that



1 would show that we have to have an evidentiary hearing  
2 or anything more. And also, of course the state is  
3 arguing as a precedential value to go beyond what we've  
4 done would be basically asking for a trial *de novo* on  
5 this matter, and I don't think -- the statute does not  
6 contemplate a trial *de novo*. The APA does not  
7 contemplate a trial *de novo* on this. Once you start  
8 having, say, an evidentiary hearing on Mr. Luce, what's  
9 next? Miss Wilson, Miss Johnson, Mr. Fryling(phonetic),  
10 and let's go back in time and do some of the people that  
11 were -- you know, came long before the actual  
12 adjudication on this. And the court made that point  
13 that Mr. Ilfie, whether there were some kind of e-mail  
14 contact with that in the Neil Caulkins affidavits, he's  
15 long gone. He's not in the picture at all in this  
16 thing.

17 So we're basically talking about these questions of  
18 was there a Chinese wall in the deposition of Chris  
19 Smith Towne, and the declarations confirm that there was  
20 what you call the Chinese wall, the fire wall between  
21 the agencies, and was there anything untoward with  
22 Mr. Luce's contacts with outside parties, with his  
23 deliberations that are APA deliberation, not covered by  
24 the Open Public Meetings Act. You have a right -- the  
25 individuals on that board have a right to talk with one

1 another in deliberations and express opinions. He made  
2 it quite clear that, you know, he was open to the very  
3 end where he was going to go with this.

4 But that's not to say that he didn't firmly believe  
5 in the specific language of RCW 80.50.110 which grants  
6 preemption. It's just a straightforward -- you see it  
7 and you know that it means preemption, and without  
8 preemption, EFSEC as an entity, no one would knock on  
9 their door. No one would apply. What's the point. You  
10 might as well go to the local agency or the county  
11 agency because there's no -- no use to go through that  
12 process without the end result being -- if it's  
13 necessary, and of course this is the first time in 30  
14 plus years that this has happened. It would have been a  
15 lot better if maybe we had a few cases since that time  
16 in the '70s to give us some guidance, but we don't.

17 I feel that on the full record when you're looking at  
18 this, when you look at the declarations and the  
19 depositions, that there should be nothing else more in  
20 the record, and in fact our strong argument, the state,  
21 is that for precedential value that the only thing  
22 should that should go up is the 16,000-plus-page record  
23 and nothing else. I don't know how else these other  
24 things come in, if you put a shroud on them and they go  
25 up to the Supreme Court or what. But it should be

1 limited to the agency record that you have before you  
2 today and it should be certified as expeditiously as  
3 possible. Thank you.

4 THE COURT: Thank you.

5 Anybody else on this side of the issue that wishes to  
6 present an argument?

7 MR. McMAHAN: Thank you, Your Honor. I'll try  
8 to cut through this fairly quickly and maybe focus more  
9 on the analytical framework than the actual testimony,  
10 evidence, declarations, all of that, unless you think  
11 it's helpful for me to walk through the allegations. I  
12 think you've had an ample opportunity to review all of  
13 that.

14 And I'll start out by saying that -- I mean we  
15 certainly understand the position the Court is in, you  
16 know. This is a complicated case. It's a massive  
17 record. The issues raised below are issues of first  
18 impression. They're issues of first impression here.  
19 Many of them are going to be issues of first impression  
20 to the Supreme Court so I frankly don't envy the Court  
21 in trying to puzzle through this. And the analytical  
22 framework itself is not a wonderfully tight fit. So  
23 again, maybe the best way is to just give you my --  
24 Horizon's observation on how the framework ought to  
25 apply and work here.

1 I will say, you know, out of the gate here, as you  
2 know, a number of options are certainly available to the  
3 Court, and we do believe that the proper thing at this  
4 point in time is to certify the record to the Supreme  
5 Court without fact-finding. I assume that the entire  
6 record goes forward, including all the declarations, et  
7 cetera, so the Supreme Court would have an ample  
8 opportunity to review and consider that which has been  
9 submitted to this court, and ultimately they're going to  
10 have to make the calls on appearance of fairness, bias  
11 prejudice, et cetera, because those really are legal  
12 issues.

13 Now, that said, you have a factual adjudication role  
14 on them. That's the unenviable part that you have to  
15 work your way through. But I think as a threshold  
16 issue, the question is what is the burden here, what is  
17 the burden for the county to require, number one,  
18 further discovery, and number two, a fact-finding  
19 hearing. And as to further discovery, you, Your Honor,  
20 counselled us, if you will, last time we were before you  
21 to, you know, to take seriously a request for further  
22 depositions, to -- it might be in our best interest to  
23 accommodate those requests, to expedite things. We  
24 received no such requests. So we're here before you  
25 with the county still wanting discovery, not having told

1 us what they want to discover, who they want to depose,  
2 where they want to go. So that's just an open field,  
3 and I don't think it's appropriate to go further here  
4 with that.

5 So then you ask what is the burden to seek --

6 THE COURT: Let me say first I don't disagree  
7 with what you said. The county's going to say, well, we  
8 were delayed in taking Mr. Luce's deposition to  
9 accommodate him, and by the time that had been  
10 transcribed, the time for which we could have asked for  
11 more depositions had expired so we want to raise it now.  
12 But I'd also say to the county I didn't receive any  
13 motion to shorten time or expand the time period prior  
14 to its passing, which would be the usual way to address  
15 this.

16 MR. McMAHAN: And I don't want to get too  
17 testimonial here, but at the end of the depositions, we  
18 sat down with counsel and said is there anything else?  
19 Let's work on the schedule. We can move the schedule.  
20 We can stipulate to a different schedule if needed  
21 within reason, and we didn't receive anything. We were  
22 willing to work that out per your direction -- advice to  
23 us that we think about that.

24 So just kind of working through the framework here,  
25 the Motley case is before you. Yes, as the county

1 indicates, the facts were different, but I think that  
2 the policy and the law is controlling, and that is  
3 admission of new evidence must be highly limited to  
4 preserve the purpose behind administrative hearings and  
5 to honor the role of the administrative agencies  
6 operating under the APA and new evidence must fall  
7 squarely within statutory exemptions. And  
8 interestingly, the APA standard talks about unlawfulness  
9 of procedure; 80.50 talks about irregularities in  
10 procedure. So there's, you know, an issue here in how  
11 this fits together. The federal APA we believe does  
12 help somewhat in this setting in understanding what the  
13 burden ought to be, and those cases talk about a strong  
14 showing as required of bad faith or improper behavior or  
15 the record is so bare that it prevents effective  
16 judicial review.

17 THE COURT: There's a good discussion of that in  
18 *Nationcapital*. We don't lightly just assume somebody's  
19 biased based on their prior relationships and so on.

20 MR. McMAHAN: The county on the 7th of December  
21 characterized what they believe they had as -- is that  
22 the information, the excerpts from the e-mail colorably  
23 review -- reveal things which are relevant. That's the  
24 way the county told you they viewed the information they  
25 had to be -- the persuasive value of it. That's what

1           they said to you, colorably review things which are  
2           relevant. Now, I don't believe that's a legal standard  
3           found anywhere that ought to be acknowledged by the  
4           Court. And I ask whether the evidence introduced or  
5           received since December 7th that's been filed with the  
6           court is any stronger or in any way makes a stronger  
7           case of irregularity, and if anything, I think it's gone  
8           the other direction. I think it's very clear that the  
9           evidence indicates that many of the allegations were  
10          without merit, taken selectively and spun and even  
11          misrepresented.

12                 So and the other thing, you know, in preparing for  
13          today, I read through all the county's pleadings, and I  
14          was struck by the repetition over and over and over of  
15          the same handful of allegations and statements when we  
16          were here before you in December. The public records  
17          request information hadn't been completed. It has now.  
18          Thousands of pages I guess have been submitted since  
19          then. And still it's the same three or four excerpts  
20          from a handful of e-mails that are taken out of context  
21          that continue to be submitted to you as accusations of  
22          improper behavior.

23                 And prior to any discovery in this case, this court  
24          -- and again, I read the transcript pretty carefully.  
25          What you indicated you were most concerned about was

1           whether Mr. Luce had stated his opinions or  
2           communications to members of the public, and you also  
3           distinguished between statements made in the  
4           deliberative process and any risk that the e-mail  
5           communications became public. And it's clear that that  
6           didn't happen. I think the county would agree that that  
7           didn't happen. There's no information that that  
8           occurred.

9           And again, Mr. Luce was one of seven equal council  
10          members acting with the assistance of an administrative  
11          law judge making a recommendation to a governor who  
12          acted under a high degree of discretion. So in that  
13          full context, you know, where are we on the burden to  
14          prove the opportunity for a testimonial hearing? So  
15          again, I'm not going to talk about the allegations  
16          themselves. I'm going to breeze through that. Happy to  
17          do that if you think that's important.

18          But I do want to talk about how at least I view the  
19          interplay between the APA provision and Section 140 in  
20          80.50 because I think that's the rub here. The  
21          petitioners alleged the applicability of 34.05.562, the  
22          APA discovery new evidence provisions, and demanded  
23          discovery and demanded a fact-finding, and now they  
24          really seem to be backing away from that. They are  
25          citing now 140, and they're saying if there's a mere



1 allegation of an irregularity, the court must simply  
2 hold a hearing, a testimony hearing on mere allegations.

3 THE COURT: That's one of my questions because  
4 it is possible to read 140 that way, but it seems  
5 directly contradictory to the mandate or direction that  
6 the proceedings shall be expedited in every way possible  
7 because a person can put a stop on everything simply by  
8 an allegation, even if this court moves these kinds of  
9 hearings to the head of the queue, and to the extent it  
10 can -- I mean I don't think it can bump a murder case  
11 with speedy trial time running and so on, but you move  
12 it to the head of the queue. And I want to hear the  
13 other side's take on this because my remarks reflect my  
14 concern that we would be adding months, if not years,  
15 because I don't know how many witnesses there would be.  
16 I'd have to find a pocket of time, which I would bump  
17 other cases to do, and then there'd have to be findings  
18 of fact without conclusions of law because those belong  
19 to the Supreme Court. But there would have to be a  
20 presentation hearing, and I'm looking at what point in  
21 this tension between an allegation qualifying for a  
22 hearing and the tension to move this through as quickly  
23 as possible, how is that tension to be resolved?

24 MR. McMAHAN: And that's exactly right, Your  
25 Honor. That's a tremendous policy and legal conflict

1 with this request. If it helps, my view of this is that  
2 regarding the applicability of the APA and Section 140,  
3 Section 140 requires judicial review be conducted in  
4 accordance with the APA. That is a plain, straight-up  
5 statement. It cannot be discounted, and if it is, it's  
6 surplusage. That shouldn't be under statutory  
7 construction. That should not be allowed to just be  
8 utterly discounted.

9 So I think it does take you back to the new evidence  
10 and testimony and discovery rules in the APA. So I  
11 think that continues to control here. 140 furthermore  
12 actually does not require a fact-finding hearing. The  
13 court must first find -- and again, I think it's in the  
14 context of the APA provisions as construed by the cases  
15 we've briefed. It requires that first, judicial review  
16 cannot be limited to the administrative record. That's  
17 the first finding, and I think that takes you back to  
18 the APA standard and does require this court to consider  
19 the information provided under the policies under the  
20 APA. And then if one makes that determination, you ask  
21 are there alleged irregularities in the proceedings.  
22 That cannot be limited to the -- that would impair  
23 review to be limited to the APA record, and then the  
24 court would hold a fact-finding hearing.

25 So I think that this still has got to be reviewed in

1 the context of the APA record. I do think, as Mr. Crews  
2 indicated, that there is testimony before the court.  
3 I'm very interested to hear what your law review article  
4 says on this.

5 THE COURT: I said it wasn't a law review  
6 article, that it was a paper published at a CLE  
7 presentation. I do have some law review articles.

8 MR. McMAHAN: Next time I'll be better prepared.  
9 But I think the Court can take the testimony that's  
10 before it into consideration at this point in time with  
11 the way these statutes interplay, make some  
12 determinations upon what's presented to you, review the  
13 testimony and the declarations and make some -- frankly  
14 even some credibility findings and make a determination  
15 that would allow the Court to certify it.

16 So just in conclusion and to reiterate your concern,  
17 the legislature fundamentally provides a strong policy  
18 requirement for expedited review. You acknowledged on  
19 December 7th that that requirement overrides the  
20 procedure before this court. In terms of fact-finding,  
21 there's a strong public policy and law that would not  
22 allow the Superior Court to become a fact-finder in APA  
23 proceedings. The county must demonstrate strong  
24 evidence of irregularity and unlawfulness for this court  
25 to cross over that threshold and become a finder of

1 fact. And we believe, and I think the evidence is  
2 clear, that the deliberations that happened are wholly  
3 regular, not irregular, regular, and the communications  
4 were regular procedures by administrative officials  
5 doing their job and strongly committed to following the  
6 law, and to the extent there was any bias or prejudice,  
7 the Administrative Procedures Act itself as construed by  
8 the *Opal* decision clearly, clearly authorizes  
9 decision-makers to hold strong views on policy and  
10 ideology that shapes their decisions. The *Opal* case  
11 clearly authorizes decision-makers to even talk to  
12 parties in adjudicative proceedings about other issues,  
13 even if they're closely-related policy, legal issues,  
14 legislative issues, and the legislature I think made  
15 clear, and the *Opal* case makes clear that absolute  
16 perfection is not the standard of the APA, that for  
17 agencies that hold multiple roles, wear a lot of  
18 different hats, that the law is not so strict to tighten  
19 down their responsibilities so much that they can't even  
20 communicate with the regulated community, and that's  
21 what's alleged here.

22 THE COURT: I think I mentioned something about  
23 this last time. It comes up maybe in a smaller pond,  
24 but where we find boards of county commissioners who sit  
25 both in a legislative capacity and then later are an

1           appeal board to which reviews are taken, like on land  
2           use issues for instance, and when they become  
3           quasi-judicial how they must separate their actions  
4           differently than when they're performing their  
5           legislative functions in contact with their constituents  
6           and so on. So that kind of issue is not new. One of  
7           the difficulties here is the many hats Mr. Luce wears,  
8           but it also isn't lost on me that the Governor really  
9           makes the decision here.

10           All right. Anybody else?

11           MR. McMAHAN: That's all we have to say I think  
12           on behalf of the respondents. Thank you, Your Honor.

13           THE COURT: Okay.

14           MR. CAULKINS: Good morning, Your Honor. For  
15           the record, Neil Caulkins, Kittitas County deputy  
16           prosecuting attorney.

17           Again today we're talking about what statutory  
18           framework we're under, what are we here for, what is the  
19           court's role. And as the county has briefed in the --  
20           in what is before you under 80.50.140, when there are  
21           alleged -- I'm just reading from it: "...there are  
22           alleged irregularities in the procedure before the  
23           council not found in the record, but finds the standards  
24           set forth in subparagraphs (b), (c) and (d) of this  
25           subsection are met, the court shall proceed to take

1 testimony and determine such factual issues raised by  
2 the alleged irregularities and certify the petition and  
3 its determination of such factual issues" --

4 THE COURT: But is it your position that a mere  
5 allegation, not even supported by a scintilla of  
6 evidence, forces a protracted evidentiary hearing and  
7 thereby frustrates the legislative intent to use every  
8 way possible to expedite the proceedings?

9 MR. CAULKINS: No, it is not, Your Honor. And I  
10 think in our briefing -- in the county's briefing I  
11 talked about how if the -- this interplay with the --  
12 between 80.50 and the APA. I talked about the threshold  
13 determinations under the APA in the various cases, and  
14 it is the county's position that these allegations, the  
15 sort of indication we have in the various declarations,  
16 what is the statements made in the depositions, meet the  
17 threshold requirements.

18 THE COURT: Well, in reading the depositions --  
19 maybe you can point out something -- I didn't see any  
20 conflict between Mr. Luce's deposition and his earlier  
21 declaration, and as far as the Chinese wall issue, there  
22 could hardly be a better one than set up with Ms. Towne,  
23 about the only contact she had was to set up her  
24 billing. She was an independent contractor. And as far  
25 as the disagreement as to whether or not Mr. Luce and

1 Ms. Johnson had a meeting, I'm wondering if that doesn't  
2 make any difference which one of them is correct in  
3 their memory in light of RCW 34.05.455(1)(a) that allows  
4 *ex parte* communications between members of an  
5 adjudicative body.

6 MR. CAULKINS: As to the Chinese wall between  
7 the entities, we're -- I think the county will concede  
8 I'm not seeing anything there. I think what the county  
9 is seeing in the depositions, which is congruous with  
10 what was revealed in the public disclosure materials, is  
11 a bias by Mr. Luce driven by -- again, I have to step  
12 back. I think that the statutory provision here in 140  
13 does not contemplate this -- the court sitting in this  
14 posture to make determinations of the merits and then  
15 what consequences that determination has to the matter  
16 as a whole. So what I'm saying now has to do -- I'm  
17 somehow not arguing the merits of this because I don't  
18 think that is what's before us here. But that the kinds  
19 of things Mr. Luce said in deposition and was in the  
20 released public disclosure materials I think shows a --  
21 an improper motivation by driving to preemption because  
22 of a concern for the -- the status or how his -- of his  
23 entity, how that is perceived. The notion that -- the  
24 very fact that the county has a inarguably GMA-compliant  
25 code provision for siting wind farms was an infringement

1           upon turf; therefore, that required the county to be --  
2           to be preempted. I think these are --

3           THE COURT: But can the county trump the state  
4           when it says under RCW 80.50.110 that if any provision  
5           anywhere conflicts, the state hereby preempts the  
6           regulation?

7           MR. CAULKINS: That's a question for the Supreme  
8           Court. The county's position is that the first part of  
9           110 says anywhere -- something to the effect of preempts  
10          any law now in effect. GMA wasn't in effect at the  
11          point. The GMA came in later, and the GMA describe --  
12          requires all the government entities to abide by it, and  
13          our wind farm overlay provision is a GMA ordinance.

14          THE COURT: But it's still a county ordinance,  
15          right?

16          MR. CAULKINS: That's true, and --

17          THE COURT: And we would all agree that the  
18          county is an agency nested within the state, and if  
19          there's a conflict between the child and the parent, the  
20          parent's going to win here, right?

21          MR. CAULKINS: Yes, but I think that the  
22          question is what is the interplay between 80.50 and the  
23          Growth Management Act is -- that's one of the key issues  
24          in the case. And that will be something that we'll need  
25          to be decided by the Supreme Court.



1           In a nutshell, our position is that 80.50.140  
2           requires that when there are allegations of  
3           irregularities -- and I believe the county has met the  
4           threshold showings for such under the APA -- that this  
5           court's job is to make -- determine such factual issues  
6           to the Supreme Court. There is certainly a focus in  
7           this statute that this should -- that this is to be an  
8           expedited process. There is also a focus in this  
9           statute that the Supreme Court is not to be a trier of  
10          fact. And that is one of the problems with the idea of  
11          --

12           THE COURT: What fact is at issue that isn't  
13          tied to a conclusion of law?

14           MR. CAULKINS: Whether a given -- the  
15          distinction that I have in my mind is whether a given  
16          phone conversation happened, what were the contents of  
17          it. That is all factual --

18           THE COURT: I agree. It would be a marshaling  
19          of the quantity of data, but without concluding whether  
20          they breached any particular legal standard.

21           MR. CAULKINS: Right. Right. That's the  
22          distinction I have in my mind. So one -- there would be  
23          a finding from the court saying this phone call happened  
24          or it didn't happen. The contents were this, that, and  
25          but then there would not be a determination that this

1           did or did not violate the APA's prohibition on *ex parte*  
2           communications for example, much less --

3                   THE COURT: I agree with what you're saying.

4                   MR. CAULKINS: I'm sorry?

5                   THE COURT: I agree with what you're saying, but  
6           I'm not sure I see any material facts in dispute.

7                   MR. CAULKINS: Okay. The --

8                   THE COURT: But what the effect of those are I  
9           think I leave to the Supreme Court.

10                   MR. CAULKINS: Uh-huh. I think that mostly  
11           covers what the county was wanting to say here, Your  
12           Honor. There's been some discussion of *Motley*. *Motley*  
13           is a different case, and those distinctions have been  
14           brought out in our brief. I think where you're -- the  
15           question under 34.05.460 -- 562, excuse me, that has to  
16           do with *Motley* is that the exception justifying taking  
17           of new evidence has to fit squarely within that section  
18           of the APA, and *Motley* it didn't because they were  
19           talking about equitable estoppel. In this case we are  
20           talking about allegations that would justify the  
21           disqualification of a member of the decision-making  
22           body. That squarely fits under 562. So there are some  
23           distinctions there, but those I think I've outlined in  
24           the brief.

25                   THE COURT: No. You've done a good job. Thank

1           you.

2                   MR. CAULKINS: Thank you, Your Honor.

3                   THE COURT: Please come forward. My questions  
4 always kind of telegraph the things that are on my mind,  
5 so you're prepared after listening to my remarks. Go  
6 ahead.

7                   MR. SLOTHOWER: My name is Jeff Slothower, and  
8 I'm here on behalf of Petitioner Steven Lathrop. I had  
9 some remarks prepared, but based upon the way the  
10 questions have gone today, I want to really focus on the  
11 statute.

12                   First of all, and the statute I'm referring to is  
13 80.50.141. The Motley case and the APA, I wanted you --  
14 I think you should keep in mind, Your Honor, that  
15 there's a maximum statutory interpretation that we all  
16 learned in law school that said the specific statute  
17 controls over the general.

18                   THE COURT: You said that in your brief.

19                   MR. SLOTHOWER: I know. I just wanted to remind  
20 you. Because I think that there is a very fine  
21 distinction that the legislature intended to draw, and  
22 in their language in the statute, they didn't do a very  
23 good job in drawing that distinction. And perhaps  
24 that's --

25                   THE COURT: I happen to agree with you, but I

1 don't want the legislature thinking I'm telling them  
2 what to do.

3 MR. SLOTHOWER: I'm not suggesting that you  
4 should, Your Honor. That's obviously not your role.  
5 But your role is really one that is unique and probably  
6 for a jurist troubling because you're required to make  
7 factual findings under this statute, but you're not  
8 allowed to make legal conclusions based upon those  
9 factual findings. And I think if you look at the entire  
10 statutory scheme, the reason that the legislature  
11 intended you to kind of step outside your normal role  
12 and make factual findings without a conclusion is  
13 because these are ultimate -- the policy is here that  
14 these are ultimate -- because this is the Governor's  
15 decision, it's ultimately for the Supreme Court to  
16 conclude whether she did it right or whether she did it  
17 wrong.

18 THE COURT: It's not so much outside my role,  
19 but it's a limitation. You know, if there's a jury  
20 trial, the jury finds the facts and the court gives them  
21 instructions on the law. If it's a bench trial, then I  
22 am both the fact-finder and hand down what legal  
23 principles are applicable. So it's a little odd for me  
24 to be the jury without any -- and the Supreme Court to  
25 be the judge on the principles. But I thought

1 Mr. Caulkins said it correctly: It seems to me in that  
2 kind of a case isn't my role just to marshal a quantum  
3 of evidence without drawing any value judgments  
4 regarding it? That is to say legal conclusions.

5 MR. SLOTHOWER: That's correct, Your Honor. I  
6 think your role is to look at what occurred outside the  
7 record, make factual findings with respect to that and  
8 leave it at that because the Supreme Court will draw the  
9 legal conclusions from those facts. They're not set up  
10 to be a finder of fact; you are. That's why I think the  
11 legislature was specific as to the language here and  
12 that's why I think that what we're talking about here is  
13 looking at what occurred outside the record and making  
14 facts about what occurred -- factual findings about what  
15 occurred outside the record and then sending it on with  
16 those factual findings. That's really the issue. I  
17 think it's that simple.

18 Now, when I say I think it's that simple, you're  
19 faced with a dilemma because you have to balance that  
20 with the statutory mandate to do this as fast as  
21 possible. But I would suggest to you that when the  
22 legislature uses the word "expeditiously," they intend  
23 that the -- the process does occur expeditiously, but I  
24 don't think they intended for you to move so fast that  
25 you didn't make the factual findings that they wanted

1           you to so now the Supreme Court is left with trying to  
2           draw legal conclusions from factual findings that are  
3           not made, or if they're made, were made without  
4           testimony and without all of the evidence.

5           THE COURT: Well, a deposition can be testimony,  
6           can't it?

7           MR. SLOTHOWER: It can be. It can be testimony,  
8           Your Honor, but it appears to us that there are -- there  
9           is additional material out there. There's part of the  
10          story. The deposition testimony tells part of the  
11          story.

12          And I wanted to go back to a comment Mr. Crews made  
13          and follow up on that. Mr. Crews said when you start  
14          seeing -- and I wanted to emphasize the word "start" --  
15          start seeing the whole picture. Well, that's a key  
16          comment because that's not what the legislature intends  
17          here. They don't want you to start to see the whole  
18          picture. They want you to see the whole picture. And  
19          once you see that whole picture, you make factual  
20          findings, again, without the legal conclusions, which  
21          must be extremely frustrating for a judge, and then move  
22          -- send it on forward. But you can't start to see the  
23          whole picture and then stop. And I think that that's a  
24          critical distinction that needs to be drawn here. And  
25          you've got the specific statute, tells you when you

1 start to see the picture, you have to finish seeing the  
2 picture. Tell us what you saw, and we'll draw our own  
3 conclusions from that.

4 THE COURT: Okay. Thank you.

5 I want to make sure everyone gets an opportunity to  
6 speak if they wish.

7 MR. CARMODY: I'll try to be very brief and not  
8 redundant. I think the challenge that's before you is  
9 to determine what the status of the record is that  
10 you've looked at. You alluded to the question about  
11 whether or not the record establishes any material facts  
12 or there are material facts in dispute, so in a way it's  
13 a summary judgment-type thought process. We also heard  
14 from Mr. Crews, his take and his view of the facts as  
15 they're before you.

16 THE COURT: You know, I need to interrupt you if  
17 I may because I think you're both right and not right.  
18 It's not a summary proceeding if we get to the ultimate  
19 issue regarding evidentiary hearing, and I think you or  
20 one of your colleagues pointed that out. But what I  
21 heard this morning and which I also recognized before is  
22 that there's a condition precedent. The court has to  
23 make an initial finding. It seems to me that finding  
24 can be done in a summary way based upon the quantum of  
25 evidence that's presented as to whether or not an

1           evidentiary hearing is necessary based on the alleged  
2           improprieties.

3           MR. CARMODY: You had touched on that in some of  
4           your comments, and my feeling on that or my view of that  
5           is that the legislature addressed that in the statute  
6           when it used the concept of allegations of procedural  
7           irregularities that the initial threshold for  
8           fact-finding is the allegation.

9           THE COURT: Now, your colleague, at least if I  
10          may say it that way, those who are on the same side of  
11          the issue as you, when I asked the question is it your  
12          understanding then that a party who's dissatisfied in  
13          the result of one of these hearings, which are long and  
14          drawn out, in this case 16,000 pages -- I don't know how  
15          many Bibles that is to read -- simply can then stop  
16          everything on the basis of an allegation and require  
17          maybe months and months of further hearings simply by an  
18          allegation of impropriety, or doesn't there need to be  
19          some kind of threshold showing that the allegation is  
20          worthy of further examination? Or do you think -- and  
21          in the context of "shall expedite" such petition "in  
22          every way possible"? I mean there's a tension there.  
23          If the allegation alone can stop the process, how do I  
24          put that together, or a trial judge put that together  
25          with expediting it "in every way possible"?



1 MR. CARMODY: Well, I think that the statute  
2 answers that. And I think what the statute specifically  
3 says that --

4 THE COURT: "If the court finds..." What if I  
5 don't find that?

6 MR. CARMODY: That there's no allegations of  
7 improprieties?

8 THE COURT: If the court finds a review cannot  
9 be limited to the administrative record.

10 MR. CARMODY: Because there are alleged  
11 irregularities in the procedure. And then it says,  
12 "...the court shall proceed to take testimony and  
13 determine such factual issues raised by the alleged  
14 irregularities..."

15 THE COURT: So now I'm back to -- since I'm not  
16 making conclusions of law but only marshaling the  
17 quantum of facts, what material fact is at issue,  
18 especially if I were, as I'm going to be inclined to do,  
19 include the depositions as a supplemental part of the  
20 record?

21 MR. CARMODY: Well, I think that's part of --  
22 part of the process that's a little bit challenging. In  
23 the materials and submissions to you there were  
24 allegations that for example the record that was  
25 disclosed through the Public Disclosure Act was not

1 appropriately authenticated. So it should be excluded.  
2 So in their motion to strike, they're saying strike all  
3 of that because it's not been authenticated. That's  
4 what an evidentiary factual hearing would do is say  
5 here's the factual basis, the authentication, and here's  
6 a set of documents for review by the Supreme Court. The  
7 same thing is true where they made motions to argue and  
8 to strike certain testimony as hearsay or improper.  
9 That would be taken in the context of a factual  
10 situation, so --

11 THE COURT: I guess you're using this as an  
12 analogy?

13 MR. CARMODY: It was a specific argument they  
14 made in their materials to you.

15 THE COURT: I should put this in the form of a  
16 question. It's your position that if there was an issue  
17 regarding authenticity of a piece of admissible  
18 extrinsic evidence down below, that the ruling on that  
19 should come before me as part of an alleged impropriety?

20 MR. CARMODY: I think that's part of the  
21 fact-finding process. I don't think that's something  
22 that should be argued at the Supreme Court. So if we  
23 were to go straight to the Supreme Court with the record  
24 --

25 THE COURT: Courts do that all the time, say

1           that the court didn't admit evidence properly. That  
2           would be a conclusion of law. It wouldn't be something  
3           a jury would decide, or a fact-finder.

4           MR. CARMODY: I was confused by the arguments  
5           made by Mr. Crews and Mr. McMahan because it seemed to  
6           me that they were suggesting two different options  
7           available to you. One option was limitation of the  
8           appellate record to the 16,000-page administrative  
9           record and exclusion of everything else.

10          THE COURT: That's what they wanted, right.

11          MR. CARMODY: Mr. McMahan seemed to suggest that  
12          all of these declarations in those materials also go up.  
13          Those are fundamentally different concepts. If the idea  
14          is that the entire record goes up, including the  
15          declarations, the depositions, all of that, I think  
16          that's a process that's appropriate.

17          The problem at the Supreme Court level in my judgment  
18          is whether or not those are conclusive of discovery and  
19          factual determinations as it relates to the various  
20          claims of irregularity that have been presented. The  
21          issue for example about the dialogue between Mr. Luce  
22          and Mr. Peeples, and that whole story, you've got half  
23          of a story there. You could read that and interpret and  
24          infer from that communication one thing based on your  
25          perspective and a different from the other. I believe

1           that's what this contemplates in terms of a factual  
2           determination.

3           THE COURT: Why wouldn't that be a conclusion of  
4           law? As long as I make sure the record has Mr. People's  
5           position and Mr. Luce's position and then as to whether  
6           or not it involved any impropriety, that would be a  
7           conclusion of law, wouldn't it?

8           MR. CARMODY: I think that would be fine as long  
9           as the record was complete on that.

10          THE COURT: Okay.

11          MR. CARMODY: And I think that's where the  
12          fact-finding question goes with respect to testimony.

13          THE COURT: All right. I'm smiling because one  
14          of the other attorneys said I think it's an interesting  
15          puzzle for the legislature to set up something this way.  
16          I don't think a judge or a lawyer would draft something  
17          like this.

18          MR. CARMODY: I'm not going to dis --

19          THE COURT: Of course, judges and lawyers aren't  
20          the most popular people in the world anyway.

21          MR. CARMODY: And I'm not going to disagree with  
22          it because it really presents some sort of process and  
23          intellectual challenges. I don't know how you separate  
24          for example fact-finding outside the context of  
25          substantive claims. You know, normally -- you used your

1 jury example: Here's the law and here's facts that bear  
2 upon that. So what is it that you're applying and that  
3 sort of thing is a challenge.

4 THE COURT: Because facts are always relative to  
5 the context, and, you know, we learned that from like  
6 quantum physics for example: Something that might be a  
7 fact that might be relevant in one scenario would have  
8 completely nothing to do with another scenario. So you  
9 have to have in mind what legal principles are we going  
10 to be applying when deciding which facts are relevant  
11 here. I do understand that.

12 MR. CARMODY: It's a challenge, and quite  
13 frankly from our point of view, the concerns and the  
14 points of concern that we have with respect to the  
15 record that exists is that there's evidence out there  
16 through the e-mails and that sort of thing of what we  
17 believe to be improper *ex parte* communications with  
18 counsel. There's a whole spin on the preemption  
19 argument, and the dialogue with the Governor's office  
20 when that issue was specifically addressed or being  
21 addressed in the context of our hearing. We were never  
22 advised, never told, never participated in that. We  
23 were troubled by the fact that Mr. Luce specifically  
24 said it was improper procedure to communicate outside of  
25 the deliberative process with members. You mentioned

1 the statute under the APA, but he denied any of those  
2 allegations. Patty Johnson came up with exactly the  
3 opposite, that she was -- it's that factual tension that  
4 exists out there that needs to be narrowed --

5 THE COURT: I'd agree with you except for the  
6 other statute which I brought to your attention, which  
7 is RCW 34.05.455(1)(a) that talks about *ex parte*  
8 communications being allowed in multimember bodies by  
9 members of that body.

10 MR. CARMODY: I understand that.

11 THE COURT: All right. I think I'm ready to  
12 rule on this.

13 MR. CARMODY: Thank you.

14 THE COURT: I've been a little bit unfair to the  
15 other people waiting this morning. We probably should  
16 have set this for a special hearing. I actually had  
17 some prepared remarks, but after listening, I don't  
18 think I can rely just on my prepared remarks. I don't  
19 know if this microphone has been fixed so I'll try to  
20 speak a little louder.

21 I think this case brings into highlight what the  
22 difference is between what is a finding of fact and what  
23 is a conclusion of law, something that in the old common  
24 law wasn't much of an issue, but since the federal  
25 rules came in in the 1930s, we've always had this

1 bifurcation by courts, especially trial courts, making  
2 findings of fact and conclusions of law. And in this  
3 regard there's an article by Professor Jaffe called:  
4 *Judicial Review: Question of Law*, 69 Harvard Law Review  
5 239 (1955). And this law review article by Professor  
6 Jaffe has been cited with approval in *Leschi versus*  
7 *Highway Commission* in 84 Wn.2d 271 at page 283 (1974).

8 Now, in my subjective opinion, Professor Jaffe's  
9 article is excellent, maybe even brilliant, and it deals  
10 with judicial review of administrative agencies and with  
11 a distinction between what is a finding of fact and what  
12 is a conclusion of law. He says that a finding of fact  
13 is an inference based on evidence that asserts a  
14 phenomenon has happened independent of, or, anterior to  
15 any assertion as to its legal effect. That legal effect  
16 would be the conclusion of law. He says, "The finding  
17 is made for a purpose or function. The question then is  
18 not whether the fact exists in the absolute sense, but  
19 whether the evidence is adequate to justify the exercise  
20 of power, ultimately whether the evidence is a  
21 sufficient moral predicate in the sense that society  
22 will accept it as a sufficient for the exercise of the  
23 power in question."

24 Now, leaving Professor Jaffe and turning to Judge  
25 Hicks here, a legal concept, on the other hand, is a

1 rule or standard of conduct that is isomorphic and  
2 applies to many particular situations and is not  
3 specific to any one phenomenon. In other words, a legal  
4 principle exists and there can be many phenomena that  
5 come under that legal principle, and the easiest way to  
6 see this, it seems to me, or at least an easy way to see  
7 this is to look at an algebraic formula, like rate times  
8 time equals distance. That's the value. That's the  
9 legal conclusion. Within that you can plug in any  
10 factual rate, any factual time and it's going to result  
11 in a distance calculation.

12 So findings of fact always involve counting or  
13 measurement about the quantum of evidence and whether it  
14 is substantial enough to draw a certain inference.  
15 Because remember -- I'll speak to the record and not to  
16 anyone in particular -- in findings of fact we have  
17 elemental findings of fact, but there's also the  
18 obligation from those elemental findings of fact to  
19 sometimes draw factual inferences and show that there's  
20 a nexus between the elemental facts and a factual  
21 inference. That's where we get into the context of what  
22 legal principles are we talking about.

23 But all that is different than a conclusion of law.  
24 We can induct factual evidence from the world that we  
25 share in common and then from those inductions deduct



1       certain logical inferences, but we can also deduct  
2       conclusions of law, once we have a baseline, that is  
3       what's the minimum standard that has to be met here and  
4       has that been breached?

5       So I say a legal conclusion always involves a value  
6       judgment being made by comparing the state of facts  
7       found, which is what the fact-finder does, to a  
8       particular state or quality and then recognizing the  
9       difference present. It is comparing intensity, like  
10      temperature for instance, as opposed to measuring  
11      quantity, like counting the number of beans for  
12      instance.

13      So when the legislature sets us up here, and I think,  
14      as all of us who practice here in this area recognize,  
15      it's very unusual to say we're going to make factual  
16      findings but not know in what context or have any  
17      relationship to conclusions of law.

18      Now, our Supreme Court, and it's not alone, has  
19      muddled the water even more because we've kind of  
20      slipped into -- and "we," I mean the Judiciary and Bar,  
21      the legal community -- into -- I don't want to call it a  
22      fog, but I want to say a loss of requiring a clear  
23      distinction between what is a finding of fact and a  
24      conclusion of law. That's why we see appellate court  
25      cases that say such things as, well, any finding of fact

1           that's really a conclusion of law, we'll treat it as  
2           such. And we see cases that say, well, this is really a  
3           mixed question of law and finding of fact. And those  
4           statements are made because the lack of clarity as to  
5           what is a finding of fact from the context under  
6           examination and what is the legal principle or the  
7           conclusion of law that can be drawn from that fact to  
8           see whether or not when comparing it to the legal  
9           standard that applies, it breaches that standard or  
10          comes up and meets that standard, whatever side of the  
11          issue you're on.

12                 Now, I kind of wanted to put that in the record not  
13                 so much to just hear myself talk or to educate people  
14                 who already probably have more education than I do, but  
15                 to share for any community members that are here I think  
16                 the difficulty that's presented by RCW 80.50.140. Now,  
17                 when I first was presented with this, it seems to me  
18                 that there was -- I don't know if I want to call it a  
19                 Friar's Lantern, but a wisp that there might be  
20                 something here based upon some e-mails that the state  
21                 says were cherry picked. And maybe they were; maybe  
22                 they weren't. It gave me the impression that Mr. Luce  
23                 wasn't running a very tight ship, and then I made an  
24                 unfortunate comment, which has come back to make me sad  
25                 that I'd said it, because although I didn't mean it to

1           be either insulting or derogatory, it wasn't the right  
2           place to use humor in a case so big. It was a play on  
3           words with the phonetic sounding of Mr. Luce's name.

4           But having said that, and I'll apologize for that, I  
5           also think that the most difficult issue here or the  
6           most difficult problem here does come from Mr. Luce's  
7           conduct, but not so much because of the character of  
8           Mr. Luce but because of the many roles that he's playing  
9           -- or working. And so there are these natural  
10          conflicts, which I think in some ways can fairly be  
11          described as bias if you're on the other side of the  
12          issue, especially when he takes a strong position or  
13          preemption, which everybody talked about and nobody  
14          cited, and that's RCW 80.50.110. And we had a little  
15          bit of a colloquy here in court this morning on this  
16          because Mr. Luce has taken a strong position that the  
17          state preempts this, and even if Kittitas County has  
18          complied with the Growth Management Act, which also has  
19          its genesis in state law and that the Energy Facility  
20          Site Council, EFSC, can override that, and of course  
21          that gets him sideways with people like Ms. Towne and  
22          the county.

23          So seeing that e-mail, I thought, you know, to be  
24          fair here in marshaling the facts, let's see if there's  
25          something to this allegation. Now, for that purpose I

1        allowed further discovery, both in the way of  
2        declarations, but more importantly by way of deposition,  
3        to see if there was a thread that should be followed  
4        through the catacombs to a monster of some sort. But  
5        when I look at the depositions that were taken, I don't  
6        really see any meaningful distinction between Mr. Luce's  
7        deposition and his earlier declarations that were here,  
8        and I don't see any material factual issue here. In  
9        fact, as conceded by either the county -- I guess by the  
10       county, the Chinese wall issue certainly has disappeared  
11       by how Ms. Johnson conducted herself. The wall was  
12       present as it should have been. There is this one fact  
13       that could be at issue regarding Mr. Luce and Ms. Towne:  
14       One says a meeting occurred and the other denies it.

15                MR. McMAHAN: Your Honor, I'm sorry. Just for  
16       the record, I think you're mistaking Towne with Johnson.

17                THE COURT: Thank you. Patty Johnson. I am.  
18       Too many names for me. Thank you. That is who I meant  
19       to say.

20                That I think would call for a fact-finding hearing  
21       and for me to make a determination as to what's the fact  
22       here, as alluded to by the public record. Except when I  
23       headed out to do that, I took a look at this other  
24       statute that says, well, wait a minute. If they can  
25       have an ex parte communication under RCW 34.05.455

1           (1)(a) where it says, quote, "Where the ultimate legal  
2           authority of an agency is vested in a multimember body,  
3           and where that body presides at an adjudication, members  
4           of the body may communicate with one another regarding  
5           the proceeding." So it doesn't make any difference  
6           who's right, whether Ms. Johnson or Mr. Luce. Doesn't  
7           make any difference because it can happen or not happen  
8           and it is not improper.

9           So not wanting to draw any legal conclusions, here's  
10          what I think is the best that I can do. I don't see the  
11          need for any further evidentiary testimony, but I also  
12          think that -- and that's because I don't think there's  
13          been a minimum threshold here that substantiates the  
14          allegation of impropriety. But I think the -- it was  
15          important for me once that allegation was made to allow  
16          discovery, which has been done and which I've reviewed.  
17          And what conclusions of law I guess one can draw from  
18          that regarding any impropriety is left up to the Supreme  
19          Court because that wouldn't be a factual finding.

20          So there was a sufficient allegation of procedural  
21          irregularity to warrant this additional discovery, but  
22          after the discovery was completed, when I look at the  
23          materials submitted by the parties, I don't show any  
24          material disputed issue of fact that would require any  
25          further evidentiary hearing. I don't find there's a

1 showing sufficient to show remand to the governor or for  
2 EFSC insofar as any procedural irregularities are  
3 concerned. However, I think this has to be subject to  
4 review because I'm not the king here. And so I'm going  
5 to supplement the record -- this will be like putting a  
6 flea on the back of an elephant -- and supplement the  
7 record with:

- 8 (1) the declaration of Patty Johnson,
- 9 (2) the third declaration of Neil Caulkins,
- 10 (3) the declaration of Daryl Peeples,
- 11 (4) the declaration of Aaron Anderson,
- 12 (5) the declaration of Mr. Luce, attached to the  
13 state's brief here,
- 14 (6) the declaration of Towne, also attached to the  
15 state's brief, and  
16 the deposition of Mr. Luce and the deposition of  
17 Ms. Towne.

18 And I'm going to call that a supplemental record on  
19 the issue of impropriety only. And in that way I'm  
20 hoping to be fair to everybody here so you can argue  
21 from that supplemental record, assuming the Supreme  
22 Court allows you to do that, and they can decide whether  
23 this record does two things: First, shows any  
24 impropriety or irregularity, or second, if from that  
25 record they disagree with my finding that there are not

1           sufficient facts here in dispute. There are facts, but  
2           they're not in dispute, and they may rule that a further  
3           evidentiary hearing should be held. They can remand it  
4           back to me and then they can deal with the legislature  
5           about whether this is an expedited process or not.

6           Because it seems to me that our overall goal -- and I  
7           don't believe anybody here would disagree with me -- is  
8           to follow the legislature's directive. They're the ones  
9           that the people elected here and we courts are just here  
10          to make sure that they don't violate the constitution  
11          and that they follow their own statutes. So it's the  
12          people that in the form of the legislature that have the  
13          ultimate authority, and as long as they stay within the  
14          constitution. And that's what my intent is to do here,  
15          is to push this through as quickly as possible.

16          It's a very unusual statute. It bypasses the trial  
17          court and goes right to the Supreme Court. You know,  
18          back in the old days I think before *Thorndike v.*  
19          *Hesperian Orchards*, the Supreme Court did make factual  
20          findings, if you go back far enough in our common law,  
21          but ever since the *Thorndike v. Hesperian Orchards* case,  
22          they've seen their role differently.

23          So with that supplementation, I'll otherwise certify  
24          the record to go on up to the Supreme Court, let them  
25          make their decision. And I'll follow the case with some

1 interest because it is a case of first impression, and I  
2 hope the worst-case scenario is that they say that,  
3 well, the judge wasn't too sharp, but his error didn't  
4 do any harm.

5 MR. SLOTHOWER: Your Honor, one question for  
6 clarification: When you identified the deposition  
7 testimony, there are a number of exhibits to both of  
8 those depositions. I assume that they're included?

9 THE COURT: The exhibits to the depositions can  
10 be included as part of the deposition. I'm just going  
11 to say that and let all the 15 or so law clerks of the  
12 Supreme Court -- or maybe they've got 21 -- figure that  
13 out.

14 (A recess was taken.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



## CERTIFICATE OF REPORTER

STATE OF WASHINGTON     )  
                                  ) ss.  
COUNTY OF THURSTON     )

I, RALPH H. BESWICK, CCR, Official Reporter of  
the Superior Court of the State of Washington in and for the  
County of Thurston do hereby certify:

That I was authorized to and did stenographically  
report the foregoing proceedings held in the above-entitled  
matter as designated by Counsel to be included in the  
transcript.

Dated this 27th day of February, 2008.

---

RALPH H. BESWICK, CCR  
Official Court Reporter  
Certificate No. 2023

# EXHIBIT D

## **EXHIBIT A**

**Excerpts from Deposition of James O. Luce**

### **INDEX**

#### **TESTIMONY REBUTTING COUNTY ACCUSATION:**

**Obsession with viability of EFSEC and alleged efforts to secure “more business” for EFSEC**

**Pages 1 - 5**

#### **TESTIMONY REBUTTING COUNTY ACCUSATION:**

**Existence of “Chinese Wall” between agency representatives and agency staff**

**Pages 5 – 8**

---

#### **TESTIMONY REBUTTING COUNTY ACCUSATION:**

**Alleged impartiality and prejudgment**

**Page 8 – 9**

---

#### **TESTIMONY REBUTTING COUNTY ACCUSATION:**

**Alleged disregard of “local input”**

**Pages 9 – 12**

---

#### **TESTIMONY REBUTTING COUNTY ACCUSATION:**

**Alleged inappropriate contact with Governor regarding preemption**

**Pages 12 – 14**

---

#### **TESTIMONY REBUTTING COUNTY ACCUSATION:**

**Alleged inappropriate contact with legal counsel and stakeholders regarding preemption and Governor’s Statements at Wild Horse Dedication Ceremony**

**Pages 14 - 18**

*DEPOSITION EXCERPTS*

**TESTIMONY REBUTTING COUNTY ACCUSATION: Obsession with viability of EFSEC and alleged efforts to secure "more business" for EFSEC**

Q (Caulkins) How would you characterize the role of the question of EFSEC's continued viability should it not preempt, what role did that play in the deliberation?

A The preemption statute is clear and unambiguous. The preemption statute provides -- if you will allow me to refer to the statute itself. RCW 80.50.110 provides that the chapter governs and supersedes all other laws and regulations and states specifically if any provision of this chapter is in conflict with any other provision, rule or regulation, this chapter shall govern and control. It goes on to state unequivocally "And the state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended."

Alternative energy facilities, including wind power, are one of those energy facilities encompassed within 80.50. It is my opinion, it was my opinion then and is my opinion now, that on the facts and the law presented to EFSEC, and after my review of the entire record and all of the testimony, that this was, to use a criminal law analogy, beyond any reasonable doubt that this case called out for preemption, that the county's wind overlay ordinance was in conflict with and purported to supersede the law of the State of Washington. And, in fact, that is exactly what our opinion states in Order 826. I was following the law and I would follow the law today. If the Legislature chooses to change the law, that's its business.

Q My question was, what role did the idea which is expressed in that communication there, that if EFSEC did not preempt in this case that it would lose credibility, what role did that issue play in deliberations?

A If EFSEC could not preempt on these facts given this law then we would no longer be seen as following the law, and for all intents and purposes at that point in time, we should be out of business.

Q Was that idea a driving force towards preemption?

A In this case?

Q Yes, sir.

A Absolutely.

Q Okay. So, is it your testimony that preemption to maintain EFSEC's credibility was a driving force towards that recommendation?

A It's my testimony that if EFSEC had not preempted in this case, it would be violating the clear and unambiguous law in the State of Washington.

Q And, so, was that a driving force towards the decision to recommend preemption?

MR. CREWS: Object. Asked and answered.

Q You may go ahead and answer.

A I don't mind answering the question as I answered it before. Absolutely, yes. The law of the State of Washington is clear and unambiguous. The state hereby preempts Kittitas County adopted statute that purported to supersede the law of the State of Washington. I am sworn as an officer of the State of Washington to carry out the statutes of the State of Washington, and that was certainly a driving force. I would have been derelict in my duties had I not felt that way and had I not recommended preemption. In fact, I would say I would be acting ultra vires, to use a different term of law. [Emphasis added]

p. 35 - 38

---

Q (Caulkins) Item 18 mentions that the Legislature could amend the statute. I find 18 cryptic. What was being talked about there?

A Let me review the document for a moment.

Q Please do.

A (Pause) What was being -- what my comments were directed to was that the statute pursuant to which EFSEC acts, RCW 80.50, has as a specific directive to ensure -- I am reading now from RCW 80.50.010, sub 5, "...ensure that decisions are made timely and without unnecessary delay." In my opinion, some of the county's objections to the processing of this application were delaying tactics, and I reflected that fact in my exhibit.

Excuse me for just a moment. (Pause). I stated that fact, which I still stand by, in Exhibit 8.

Now, this was fairly early in the proceedings, but from my perspective, if the county wanted to litigate, which they're doing, then the Legislature could change the statute, of which it would be free to do, but from my perspective, the county's position at numerous times throughout the course of these proceedings was to add unnecessary delay and requirement, as I state here, to add duplication of permits and effectively supersede the role of EFSEC. [Emphasis added]

p. 46 - 47

---

Q (McMahan) The county, as you are aware, in the litigation has leveled an accusation at you on trying to preserve your job and the agency's role at all costs. In fact, they've issued press releases to that effect. You say at the top of that "937 forum shopping means more business."

MR. CARMODY: Objection. Foundation.

Q Do you see that?

A Yes, I see that.

Q So, you've just indicated that you are anti-forum shopping; is that correct?

A That's absolutely correct.

Q What do you mean by "Forum shopping means more business"?

A Well, what I mean by that is that if an energy developer, project, proposed project, I will call it my two bites at the apple, can go to a county and seek to win approval from that county for its project and then be turned down by that county, and then turn around and go to EFSEC, that's going to mean the potential for more business for EFSEC, and it's not business I want, quite frankly. I do not want -- in almost 40 years EFSEC has never preempted a local jurisdiction and it is the absolute last thing that I want to do. [Emphasis added]

92 - 93

---

Q (McMahan) So when you talk about loss of preemption on the potential – well, not abiding by the statute regarding preemption, at the end of that email, how does that understanding affect this opinion you state about being effectively out of business?

A Well, we wouldn't be following the law. I mean, the law is unambiguous that the state has preempted the siting of those projects that are denominated as jurisdictional projects of the Energy Siting Council. Does that answer your question, Counsel?

Q If you can't be a one-stop shop, this is what I am wondering, is there a purpose for EFSEC anymore?

A No, absolutely not. In fact, if I wasn't a one-stop shopping agency -- if the preemption authority didn't exist, I would recommend to the Legislature, not withstanding having not consulted with my governor, that EFSEC be disbanded. At that point in time, and I'm not saying from a policy perspective this is wrong, although, personally I think it's a mistake, projects, energy siting projects should be sited by local jurisdictions, and they are in the state of Idaho, for example, there is no EFSEC. This Legislature at this point in time sometime ago made the decision that the state needs to play the lead role on critical infrastructure for the state of Washington such as energy facilities, but that can change. [Emphasis added]

p. 105 - 106

---

**TESTIMONY REBUTTING COUNTY ACCUSATION: Existence of  
"Chinese Wall" between agency representatives and agency staff**

Q (Caulkins) Right. So, could you please described the wall you referred to there?

A Well, let me say this about the wall. There are a series of emails, which you attached to your declaration, which deal with something referred to as the wall. The wall, as I understand it, and I'm not practicing law anymore, refers to the principle that when council members are appointed by their agencies or departments to serve in the capacity of a judge on an adjudicative matter such as the Kittitas Valley Wind Project, that they should have no contact with anyone within their agency on the particular subject, the adjudicative matter pending before the Energy Siting Council. That's my understanding of the wall.

Q Okay. And who in your reference there -- you said somebody doesn't understand it. Who do you think did not understand the wall?

A Well, it says I didn't think that legal counsel understood the structure of the council and the wall, and I don't know the who I'm referring to, but taking everything in context in recalling the issue; the issue was brought to the council's attention I believe by Mr. Lathrop. Mr. Lathrop filed a motion, if I recall correctly, to disqualify or to maybe not -- to ask that the representatives of DNR and CTED recuse themselves from deliberations for the reason that was stated in Mr. Lathrop's motion. And I believe that my comment refers to my belief that Mr. Lathrop did not understand the structure of the council and the wall that's placed between council members and their departments on adjudicative matters. I'm referring to Mr. Lathrop in this.

Q Okay. Thank you. And what do you believe was erroneous about Mr. Lathrop's understanding of the wall?

A Counsel, the motion was filed, briefs were filed, argument was heard and an order was issued. I'm not going to discuss or go into this matter beyond the fact that I supported the order. This is a legal issue. I think I have explained my understanding of the wall as far as I could. I relied on the advice of our assistant attorney general and my analysis of the motion and the arguments pro and con and I voted in the manner that's reflected in the record, and the order speaks for itself.

Q Going now. Exhibit 13 is an email from Tony Ifie, August 12, '04, to rfryhling@charter.net, and a bunch of folks. Different exhibit, same questions.

A Want to repeat them.

(Exhibit No. 13 marked for identification.)

Q Why was the DNR participating in discussing dismissal of the appearance of fairness challenge?

A I don't know.

Q Why was Patti Johnson not a party to this email?



A Well, now, I will speculate. I will speculate that she was not a party to this email because her involvement in the case had not been challenged, but I don't know that for a fact. In fact -- well, it appears to be an email that is from -- that would be my speculation, but I don't know, so, that probably is a smarter answer is that I don't know the answer to the question.

[Emphasis added]

p. 41 - 45

---

Q (McMahan) Okay. I want to turn now to the DNR and CTED disqualification motion, if I may, and ask just a few follow-up questions there and refer you back to Exhibit 10.

A All right.

Q First of all, who is Patti Johnson? We have used that name here without saying who she is.

A Patti Johnson is the county representative, was the county representative appointed by the county commissioners in the Kittitas Valley Wind Project.

Q Okay. Patti Johnson then, does she sit as a full siting council member?

A Absolutely.

Q And what was her employment at the time she sat on the siting council?

A I think she had two different employments, and you'd have to ask her, but I think at one point in time, she was the acting director for public works and at another point in time, she was head of, I want to say, sanitary, getting rid of the garbage, but I can't -- you know, she had a role in that arena, but exactly what it was and what periods of time, I can't recall.

Q And they were both county jobs, she was employed by Kittitas County; is that correct?

A Yes.

Q And did any of the opponents ever file a motion to disqualify Patti Johnson from proceeding?

A No, they didn't which, quite frankly, surprised me.

Q Why is that?

A Because I don't see where she would be any differently situated than Mr. Fryhling representing CTED or Mr. Ifie representing DNR.

Q And there have been a few questions asked about emails where Ms. Johnson was not copied. I want to point you to again Exhibit Number 10, the email at the bottom of a chain of emails here.

A Okay.

Q And that's the email from Mr. Dewell on July 1. Was she copied on that email?

A Well, I'm reading from the top of Exhibit 10 the message from Mr. Carelli and she was copied on that, and then in the middle of the page, again, from Julian Dewell to Patti Johnson.

Q And these emails were with regard to adjudicating or deliberating that disqualification motion; is that correct?

A Yes. [Emphasis added]

p. 107 - 109

---

**TESTIMONY REBUTTING COUNTY ACCUSATION: Alleged impartiality  
and prejudice**

Q (Caulkins) I believe that that concludes what I had --

A I would like to state one more thing, Counsel, for the record. On this exhibit that you have brought to my attention --

Q Mm-hmm.

A -- there's been some suggestion here that I predetermined the outcome of this case. That is absolutely not the case whatsoever. And I would just point to item 14 in that exhibit where I note that on the record before me, which is yet to be tested in the adjudicative process, I find the county's position unpersuasive, but I want to reiterate I recognized then and recognized throughout the process that we needed to complete an adjudicative process before we reached any conclusions. [Emphasis added]

**TESTIMONY REBUTTING COUNTY ACCUSATION: Alleged disregard of  
“local input”**

Q (Caulkins) Okay. So, to your mind, why was the Kittitas Valley Power Project not about local input?

A It was everything about local input. Local input reflects the advisory council, TAC. TAC is an -- I don't want to say acronym, can't remember the exact word, but it's shorthand for the advisory council.

MR. McMAHAN: Technical Advisory Council.

A Technical Advisory Council, which is what we had provided for in the Wild Horse project, which was accepted by the county and that was the means by which the local input, continuing local input, assuming we sited the recommended siting, would be provided. Local input is critical in an EFSEC decision.

Q And, so, when it says there that the case is not about local input, that you just said that local input is critical, could you maybe take a run at that again, clarify that for me.

A All right. I'll clarify that. The case was not about local input in the sense that local input, as far as I was concerned, would be addressed on a continuing basis by the Technical Advisory Committee which had representatives, I believe, of the county and all, I shouldn't say all, many, many, if not most other interest groups. So, my assumption, going into the case, when I say what this case was not about, “Water - little used.” There is not much water being utilized in this wind project. “Air - no pollution, no CO2.” That's true. “Local input - TAC” would address the issue of local input on a continuing basis.

Q Thank you. Why was this, in your opinion, this case about I-937?

A The case was not about I-937 in the sense that I-937 was a deciding factor in the case. I should add that 937 had been approved as an alternative energy initiative, and I can't recall all the details, but it sent a clear policy signal from the people of the state of Washington in the form of law, initiative, that alternative energy facilities were to be, I will use the word, favored, maybe preferred, which is consistent with RCW 80.50, which is the statute that we

administer. RCW 80.50 requires that in policy considerations given to siting facilities, the Energy Siting Council shall consider whether the project is consistent with state policy, and one of the state policies that it is to be consistent with is air cleanliness, which is exactly what wind power does.

Q Was that communication that you have there before you, which is Exhibit 7, was that shared with the rest of the EFSEC council?

A It was shared with the rest of the EFSEC council during deliberations. These were, if you will, I would refer to them as my bench notes if I were an appellate court judge. These were the outlines of my thoughts going into the deliberations. The context for this was I went home with all of the record in the Kittitas Valley case, I sat down at a table about this size, I spread out the application, the environmental impact statement, all of the testimony of the parties, the cross examination, the entire record before me, and I spent the better part of two days analyzing all of that information and trying to reach some conclusions in my own mind as to how I thought this case should be decided during the deliberations that were to ensue the following week. That email reflects my conclusions with respect to my review of the record as it had been fully submitted to EFSEC.

Q Okay. Why did you have this communication, interchange, with Ms. Towne regarding preemption?

A I had this interchange or communication with Chris Towne for the same reason I had the communication with Chris Towne on Exhibit 7. Chris Towne was a trusted member of the Energy Siting Council and had expertise in certain areas beyond that which other council members had, particularly with respect to SEPA. I valued her knowledge and background. And I shared this email with her and then, subsequently, as I stated before, I took this email into the deliberations with me. I wanted to test my thinking with Ms. Towne before I advanced this to the full council.

Q And did you advance that to the full council?

A Yes, it was taken with me into the deliberative process, into the deliberations of the council, both Exhibit 7 and is this Exhibit 8, Counsel? Both Exhibit 7 and Exhibit 8 were taken by me into the deliberative sessions with the entire council. [Emphasis added]

p. 31 - 35

---

Q (McMahan) Okay. Thank you. Turning to Exhibit 7, if you could dig that back out again.

A I have it before me.

Q And I'm just going through the chronology as asked by Counsel is why I am jumping around a bit. Just trying to follow through on the order of the questioning before us.

So this is Exhibit 7. It's the email correspondence to Chris Towne dated December 4, '06. You have described what you meant by local input prospectively on an ongoing basis after the project is approved and permitted. Are you aware of how the county has actually characterized this in its briefing and in the press releases, that you are in essence saying there is no role for local input in our decision-making process?

A That's what they appear to be saying. And I think, while I haven't got the exact numbers before me, if you went back and looked at the record and added up the number of public meetings that we actually had, not adjudicative hearings, but public meetings to get public input on this project over the three years I believe it was before us, we have many, many, many, many, many, many hours of hearings in Ellensburg, not in Olympia, and public input has been something that this governor has stressed, I've stressed as chair of the council, and we bend over backwards to get public comment, not all of which is supportive of projects and some of which is. But I guess I would go on to say that in this Exhibit 7, I stated, and I believe this to be true, that if we made our decisions based solely on public opinion, however, we believe that to be whether it's supportive of a project or opposed to it, that we would be setting a dangerous precedent, new precedent that our decision are made by plebiscite. They're not made by plebiscite, they are made based on the law that governs us and the facts that are before us.

Q And, in fact, stay on that for a moment. If you would read down to number 3, it says, "More specifically, is about setbacks." Isn't it true that setbacks was a key local concern?

A It certainly seemed to me as such. The ball bounced back and forth between the county and EFSEC as to this whole issue of setbacks. There are no standards for setbacks. In fact, there are no standards at all under the Kittitas Valley wind ordinance or overlay, Kittitas Valley Wind Overlay Ordinance, there were no standards. And there was testimony before EFSEC and we

read the testimony before the county commissioners about what's an appropriate level of setback. I wish we had had some standards. It would have made I think all of our lives a lot easier.

We ended up following what I believe to be the only expert advice that we had in our proceedings, which was that four times the height of the project including blade tip would result in a project that was not, and I'll use the words that the expert I believe used, looming, which is to say it wouldn't stand up and stand out in an unreasonable way.

Q Okay. But the setback issue was one that was clearly raised by the Board of County Commissioners as a key issue?

A To my reading of the Board of County Commissioners' deliberations, that was the issue. The county commissioners undertook, to their credit, different field trips to different projects to try and get -- to try and reach some decision on what was an appropriate setback. To, again, my reading of the county commissioners' final decision, they never really did reach a decision. Different commissioners had different points of view. But that was the driving -- there were really three issues. They're laid out in here, but one of which was the view scape, and that has everything to do with setbacks. And the second of which was property values, although, the testimony was every which way and nobody knows what's going to happen to property values until long after the fact. And view scape and setbacks were inseparable. And, quite frankly, having grown up in Walla Walla, Washington, having a view of the Blue Mountains, I totally respect those people who find wind projects to be adversely affecting their view scape. And I think about my own family's cabin in the Blue Mountains and how I would react if I saw a wind project in front of the view scape of my family's cabin. Notwithstanding that fact, I followed the law and followed the best information I had before me and the facts of this case and reached the decision that I reached. [Emphasis added]

p. 101 – 105

---

**TESTIMONY REBUTTING COUNTY ACCUSATION: Alleged  
inappropriate contact with Governor regarding preemption**

Q (Carmody) Did you think that clarification [from the Governor] was important?

A Yes.

Q Why?

A Because the Governor's remarks were interpreted by some to mean that she would not approve site certificate agreements unless the entirety of the body politic in the local community supported it, and I wanted to ask her whether -- I did ask her whether this was a correct interpretation of her remarks.

Q Did you ask the Governor directly that question?

A Yes.

Q When did that conversation take place?

A The same day as the Wild Horse signing ceremony.

Q So, on the site in Ellensburg or --

A Yes, on the site in Ellensburg.

Q So, she finished it, she made a comment, and you asked a question?

A She finished her remarks and in discussions with her after her remarks, I spoke briefly to her.

Q What was it about her remarks that caused you concern?

A I'd have to go back and review her remarks, but, as I stated just now, the remarks seemed to suggest that unless there was total agreement from the body politic within which the site was proposed, she would not support it.

Q Was it your concern that those remarks would impact the Kittitas Valley deliberative process?

A No, my concern was that I wanted a clear signal from her as to how she would view not the Kittitas Valley project but EFSEC projects in general.

p. 59 - 60

---

Q (McMahan) Okay. I'm going to hand you back the letter from the Governor attached to Exhibit 2, this is a September 26th letter. We have focused, or I should say Mr. Caulkins and Mr. Carmody have focused extensively on just that which uses the P word, as we called it during the application process,

preemption, but could you tell me that letter has some other indication in general about how EFSEC is to apply its laws, especially I think it's the third paragraph down. I want to make sure that the record is clear on the context here and, in general, the guidance you sought and obtained from the Governor. So, would you mind just for this record reading in that provision on applying the laws.

A No, I would be more than glad to. The paragraph in question -- actually, I'll read a couple of portions of it. "Following the signing ceremony...an August 1 editorial...speculated that my remarks concerning the broad local government and community support...might signal that lack of preemption is a prerequisite for my approval of other energy projects. This speculation is incorrect." And then I think to me the gravamen of the letter was, "I do not have specified criteria that need to be met, or certain prerequisites that will cause me to approve or deny any project reviewed by EFSEC. My direction to the Council is to use all legal authorities available to it by statute and code. I will evaluate EFSEC recommendations, and base my decisions to approve, deny or remand" -- which she did in this case -- "to EFSEC for further consideration each project on its merits and consistency with law."

Q Okay. So, in your view, can you describe how that provided the council with more than just direction on preemption in terms of its role as an agency serving the governor of the state?

A The document speaks for itself. What the Governor said was that we should look at all of our legal authorities determined by statute and code and act consistent with appropriate law and that she would use our decisions, in this case, Order 826, to make her decision based upon whether she believed that our recommendation was reasonable. [Emphasis added]

p. 100 - 101

---

**TESTIMONY REBUTTING COUNTY ACCUSATION: Alleged inappropriate contact with legal counsel and stakeholders regarding preemption and Governor's Statements at Wild Horse Dedication Ceremony**

Q (Carmody) During the term of the Kittitas Valley project, did you ever communicate directly with Mr. Peebles on any matter?



A Yes, absolutely. Mr. Peeples was very involved in our rule-making procedures, was very involved in legislation, so, I had numerous occasions to talk to Mr. Peeples.

p. 73

---

Q Did Mr. Peeples request that you seek clarification from the Governor as to that point?

A I can't specifically recall. There was a general, to use the generalistic word, buzz as reflected in the "Ellensburg Daily Record" about the Governor's remarks. Whether Mr. Peeples requested that I speak to the Governor, I doubt that very much, because it would have been improper for Mr. Peeples to ask me that question given the pendency of the Kittitas Valley Wind Project. I'm sensitive enough to remarks of the Governor offered in that context to know myself that a clarification might be appropriate, and as reflected in the August 1 editorial in the "Ellensburg Daily Record," as well as other news stories, it was my opinion that such a clarification would be helpful if the Governor chose to do that, and it was my request that the Governor clarify that.

p. 20

---

Q (Carmody) Did you ever discuss the Kittitas Valley project with Mr. Peeples?

A No.

Q Are you absolutely certain of that or you just don't have a recollection?

A I made thousands of phone calls. To the best of my recollection, I had no conversations with Mr. Peeples.

Q How about representatives of Renewable Energy or any industry groups?

A I have no specific recollection of that. As I have stated, the adjudicative issues that come before the council comprise a very limited amount of my time. I would talk to representatives of Northwest Energy Coalition or Renewable Northwest, Association of Washington Business, Association of Washington Counties, Washington PUDs and others too numerous to repeat, and I will be glad to provide you a list if you wanted of all of the issues that were coming before the Legislature. We had, I would say, at least 15 or 20

different bills during this period of time that directly affected them, and numerous rule makings. [Emphasis added]

p. 74

---

Q (McMahan) Okay. Thank you for clarifying that email.

Now, back to the general legislation and rule making, et cetera, that you've been involved in. I just want to kind of have this record reflect better those things that you were doing other than just the KV deliberations.

A Okay. Well, let's start with the Energy Policy Act of 2005 which provided that -- strike that. Let me just explain. EFSEC had not had transmission siting authority, electric transmission siting authority. It's an anomaly in the statute, but until recently, we had authority to site gas pipelines and oil pipelines, but no authority to site electric lines. Congress passed a law known as the Energy Policy Act, I believe, of 2005, in which it gave FERC jurisdiction over the siting of transmission lines that were described as national interest electric transmission corridors, or lines sited within those corridors, and basically took the states totally out of the picture, with one exception. If the state had transmission siting authority, then notwithstanding the federal law, the transmission provider would have to come to the locally designated state and, in turn, there were certain criteria that the state had to assure were in its laws to be able to step in front of, if you will, FERC, Federal Energy Regulatory Commission. So, we spent a lot of time, a lot of time persuading the Legislature and our stakeholders, not all of whom were supportive of this, that if you had to choose between going to Washington, D.C. and having FERC approve a transmission line through your back 40 and choose between that alternative and having it done locally with local representatives as part of the EFSEC process, that the latter might be much more desirable. And that's just one example. I think that took two sessions of legislative time and many, many, many, many, many hour and many meetings and many hearings. Subsequent to that, the Legislature saw fit to give us additional transmission siting authority.

Prior to that, there was the CO2 legislation, ESB 6001, I believe it was. And I was very much involved in that because the Energy Siting Council is to develop rules under that bill to govern the provisions of global -- I will call it global warming legislation, for lack of any other -- and similar legislation. You seem to have a list before you. You're doing a pretty good job there, Counsel. We have a lot of bills.

The other part of my job is rule making. And the other part of the job beyond that, as I said, is what I refer to as over-the-horizon radar. It's called network with the stakeholders, find out what's on their mind, try to anticipate where they're going to be six months from now on any given issue, and then to the extent the Governor has a policy, try and articulate that policy; to the extent the Governor doesn't have a policy, feed that information into Matt Steuerwalt and suggest perhaps the development of a policy to address stakeholder concerns.

Q Okay. And does Darrel Peeples represent stakeholders as you define them?

A Yes, he certainly does.

Q Beyond the KV case?

A Yes.

Q Can you give us some examples?

A He has been very active in all of the legislation that we've had. Now, who exactly he was representing at that point in time, I don't know, but I know -- I shouldn't say I don't know. I don't believe it was the Kittitas Valley Wind Project that he was representing. He has from time to time spoken at council meetings on behalf of Northwest Independent Power Producers, NIPPC group that Bob Kahn is the executive director of when Mr. Kahn was unavailable.

Q For the record, that's N-I-P-P-C, is that correct, all caps?

Q We have talked about Mr. Kahn a fair amount today, Robert Kahn. Can you give us a little bit more background so that this record is complete on who he is, what his role is with the energy industry and with NIPPC.

A I will tell you to the best of my ability. Mr. Kahn heads a group known as the Independent Power Producers. Independent power producers came into vogue after deregulation, after federal deregulation of the energy industry would be the best way to put it. And Mr. Kahn, to my understanding, represents a number of independent power producers who have interests which they advance primarily policy and legislation before different bodies including the Energy Siting Council. The organization as such does not represent any projects. It speaks, as I said, more to a -- it's a policy body. It

does have conversations with EFSEC from time to time but not on specific projects.

Q So, would they fit with NIPPC as an organization and as members, fit within your description of stakeholders that you are by statute responsible to talk to, involve?

A Absolutely. NIPPC, Association of Washington Business, Washington PUDs, Washington Electric Co-ops, Northwest Energy Coalition, Renewable Northwest, Audubon Society, counties, cities, state legislators, staff of state legislative committees that have authority over EFSEC. I could prepare a list for you if you would like, but I would guess two score and more different stakeholder groups and then numerous individuals within each one of those groups that have specific expertise. We have talked about Collins Sprague. We talked about Puget Power. I have contact with them. Pacific Power and Light is a third utility that has an interest in EFSEC matters. I could go on.

p. 93 – 100

---

# EXHIBIT E

## EXHIBIT B

### Excerpts from Deposition of Chris Smith Towne

#### TESTIMONY REBUTTING COUNTY ACCUSATION: Alleged obsession with viability of EFSEC

Q (Caulkins) During the deliberations regarding the Kittitas Valley project, were there discussions as to whether EFSEC would remain viable if it did not preempt?

A There was a communication from Chairman Jim Luce using words to that effect. I remember one transmittal. And I believe in one of our council deliberations, the subject was raised in similar language to the effect that since that was the authority which would -- let's see, how can I phrase this - - give effect to the state siting authority where the local government did not agree with the state, it was an unexercised authority until the final stages of KV, and lacking that authority, the question was posed why would anybody come to EFSEC. I believe that was the phraseology, as nearly as I can remember. It might have occupied one percent of the total discussion time.

Q And am I correct that I heard you say that only occurred at one council deliberation?

A As I say, it was a passing comment. It could possibly have occurred at two, but I can only remember one instance. The issue was raised, we thought about it for a couple of minutes and moved on to the substantive issues in the KV case. [Emphasis added]

Pgs. 7 - 8

---

Q (Caulkins) You had mentioned earlier that in council deliberations, EFSEC's viability, if it didn't preempt, was in a passing comment, might have been your phrase. Here in the latter part, you know, just below where we were looking just now, where it is, you know, italics and underlined, appears to be some -- well, let me put this in the form of a question. Does this appear to you to be just a passing comment?

A No, I think -- again, I can't speak for him, but I read it as an expression of his strong belief that the viability of EFSEC would be challenged if

preemption was not available or exercised. And if you will go on to the last sentence, quote, that, however, is an issue for the Legislature and until it acts to do so, it has entrusted us with making these tough decisions, end quote. So, that told me that it's the Legislature's business if they want to change it and that we have the law, 80.50, under which we operate, and it's our job to exercise those authorities contained within RCW 80.50.

Q Did you share what perhaps was -- or did you share the belief that EFSEC's viability would be compromised if preemption were not exercised in this matter?

A Yes.

Q Were you concerned about the viability of EFSEC if they did not preempt in the Kittitas Valley project?

A As a member of the organization and given the statute, it was not a particular personal concern to me, but it was a more abstract concern that laws are meant to be implemented in accordance with the language of the law, and we were given that job and it wasn't for us to preempt the Legislature's authority to alter, modify, amend, or ignore any part of the law that we found difficult, and it was our job to implement it in full. So, it was more a legal slash political judgment on my part since I was just a consultant with a small role, it was not my livelihood, but I feel rather strongly about implementing the laws as they are written. [Emphasis added]

Pgs. 18-19

---

**TESTIMONY REBUTTING COUNTY ACCUSATION: Alleged disregard of "local input"**

Q In one of the bullet points there in the document where it says what this matter is not about, one of those things that it states there that the matter is not about is local input. Why was this Kittitas Valley Wind Power Project not about local input?

A Well, what he has said here is, quote, local input dash TAC, close quote. That was the Technical Advisory Committee. And the structure of our proposed decision included the TAC following the model used in the Wild Horse decision, which provided for a group of experts, largely, who would determine whether or not the order as proposed and implemented at some

time in the future assured that that which we said was going to be done in fact was done, and that it was sufficient to meet the legal requirements for fish and wildlife, water, air, noise, what have you, the standards set forth in the proposed SCA. I'm assuming that's what he meant. That is how I read it was that as to local input, TAC took care of that. But, again, that's a question for Mr. Luce.

Q And the TAC, as you described, at least, is my understanding correct, that this has to do with, let's say, as the project went forward, the implementation of it?

A Yes. [Emphasis added]

Pgs. 12-13

---

**TESTIMONY REBUTTING COUNTY ACCUSATION: Existence of  
"Chinese Wall" between agency representatives and agency staff**

Q (Caulkins) During the time that you served on the council, did you provide any reports to representatives of Fish and Wildlife?

A I was directed in my contract to provide monthly billings and a brief status report on pending cases, work to be done. It was not issue based, but, rather, procedural. For example, I spent two weeks this month in Ellensburg in adjudicatory proceedings and I expect that we will next return to Ellensburg in October where we'll probably have another week of hearings. It was of that nature.

Q Did you have any meetings or discussions with representatives from Fish and Wildlife with respect to siting of wind power projects?

A No.

Q Did you participate in any way in review or development of wind power project guidelines by Fish and Wildlife?

A No. That was done sometime before my taking the EFSEC position.

Q Did you ever discuss those guidelines in any respect with anyone from Fish and Wildlife?

A No.



Q Okay. So, the sole contact you would have with Fish and Wildlife was the monthly billings and summaries of anticipated work?

A Correct. It was a contractual obligation and that's as far as it went.  
[Emphasis added]

Pgs. 28-29

# EXHIBIT F

## Analysis of the Visual Resources Impacts of the Revised Kittitas Valley Wind Power Project

PREPARED FOR: Chris Taylor  
Horizon Energy

PREPARED BY: Thomas Priestley, Ph.D, AISP/ASLA  
CH2M HILL

COPIES: Mike Pappalardo/CVO

DATE: November 7, 2005

PROJECT NUMBER: 335601

### Purpose and Scope of the Analysis

As described in the revised Application submitted to Kittitas County on September 30, 2005, Sagebrush Power Partners, LLC seeks to develop a wind farm with a capacity of up to 246 megawatts (MW) on an approximately 6,000 acre site located on lands extending approximately one mile on either side of Highway 97 in the area approximately 12 miles north of Ellensburg. The project will entail the installation of anywhere from 64 to 80 turbines - the precise number will depend upon the specifications of the wind generation equipment that is finally selected.

The current project design represents a scaling back of the project that had originally been proposed and submitted to the Washington Energy Facility Site Evaluation Council (EFSEC) for licensing in January, 2003. The project as originally proposed would have entailed the installation of up to 150 turbines. The intent in developing the project layout now being proposed was to eliminate turbines located in areas where the greatest concerns had been expressed about the original project's potential visual effects. The locations of the turbines proposed in the original project and those that are being proposed now can be seen in Figure Vis-7. As review of this figure indicates, a string of six turbines has been eliminated from the area located to the northeast of turbine H1, along upper Elk Springs Road. Because of their proximity to the enclave of residences located on the forested slopes of Section 35, these turbines were eliminated to reduce the project's potential for having impacts on views from the dwellings in this area. In string F which is located on the ridge across from the rural residences that line Bettas Road, the number of turbines has been reduced from 13 to 6, eliminating the 5 turbines that had formerly been located north of turbine A1, and allowing the remaining turbines to be more widely spaced. A turbine formerly located to the north of turbine A1, and a string of 3 turbines formerly located to the east of string A have also been eliminated to reduce visual impacts on residences to the north. Along Highway 97, a string of 9 turbines formerly located north of turbine G1 has been eliminated to preserve the existing visual character and quality of the highway corridor as it transitions into the more scenic region to the north.

This technical memo provides a focused analysis of the visual resources impacts of the revised project. It builds on and revises the analyses of the project's aesthetics light, and glare impacts included in the Visual Resources analysis in the Draft EIS issued by EFSEC in December, 2003. The focus of this analysis is on the project's effects on views along US 97, and other views on which the previous analyses found the project to have the potential to create moderate to high levels of visual impact.

The boundaries of the lands included in the project site, the locations of the proposed turbines, and the locations of the viewpoints that have been selected for analysis are indicated on Figure Vis-1.

### Analysis Approach

The procedure followed in evaluating the impacts of the revised project on these views is the same as the procedure followed in preparing the evaluation of the aesthetic impacts of the project originally proposed in 2003. As was the case in the analysis prepared as a part of the EFSEC application, for each of the viewpoints used as the basis for analysis, an assessment was made of the existing level of scenic quality and visual sensitivity. Then, for each view, a photograph depicting the view as it now exists was paired with a simulation of the same view as it would appear with the proposed project in place (Figures Vis 2 - Vis 6). Review of these image pairs provided a basis for identifying the project's degree of visibility from each of the viewpoints and for assessing the implications of the visual changes that the project would bring about.

The assessment of the existing scenic quality of the views evaluated was made based on professional judgment that took a broad spectrum of factors into consideration, including:

- Natural features, including topography, water courses, rock outcrops, and natural vegetation;
- The positive and negative effects of man-made alterations and built structures on visual quality; and
- Visual composition, including an assessment of the vividness, intactness, and unity of patterns in the landscape.<sup>1</sup>

The ratings assigned to each view fit within the rating scale summarized in Table Vis-1. Development of this scale builds on a scale developed for use with an artificial intelligence system for evaluation of landscape visual quality (Buhyoff et al., 1994), and incorporates landscape assessment concepts applied by the U.S. Forest Service and the U.S. Department of Transportation.

<sup>1</sup> Vividness, unity, and intactness are dimensions of landscape quality that are taken into account by the system for landscape evaluation and visual impact assessment developed by Federal Highway Administration and now in widespread use for evaluation of project visual impacts (U.S. Department of Transportation Federal Highway Administration, 1988, Visual Impact Assessment for Highway Projects). Vividness is defined as the memorability of the visual impression received from contrasting landscape elements as they combine to form a striking and distinctive visual pattern. Intactness is defined as the integrity of the visual order in the natural and man-built landscape, and the extent to which the landscape is free from visual encroachment. Unity is defined as the degree to which the visual resources of the landscape join together to form a coherent, harmonious visual pattern, and the term refers to the compositional harmony or degree of inter-compatibility between landscape elements.

Table Vis.-1. Landscape Scenic Quality Scale

Rating	Explanation
Outstanding Visual Quality	A rating reserved for landscapes with exceptionally high visual quality. These landscapes are significant nationally or regionally. They usually contain exceptional natural or cultural features that contribute to this rating. They are what we think of as "picture post card" landscapes. People are attracted to these landscapes to view them.
High Visual Quality	Landscapes that have high quality scenic value. This may be due to cultural or natural features contained in the landscape or to the arrangement of spaces contained in the landscape that causes the landscape to be visually interesting or a particularly comfortable place for people. These landscapes have high levels of vividness, unity, and intactness.
Moderately High Visual Quality	Landscapes which have above average scenic value but are not of high scenic value. The scenic value of these landscapes may be due to man-made or natural features contained within the landscape, to the arrangement of spaces, in the landscape or to the two-dimensional attributes of the landscape. Levels of vividness, unity, and intactness are moderate to high.
Moderate Visual Quality	Landscapes, that are common or typical landscapes which have average scenic value. They usually lack significant man-made or natural features. Their scenic value is primarily a result of the arrangement of spaces contained in the landscape and the two-dimensional visual attributes of the landscape. Levels of vividness, unity, and intactness are average
Moderately Low Visual Quality	Landscapes that have below average scenic value but not low scenic value. They may contain visually discordant man-made alterations, but the landscape is not dominated by these features. They often lack spaces that people will perceive as inviting and provide little interest in terms of two-dimensional visual attributes of the landscape.
Low Visual Quality	Landscapes that have below average scenic value. They may contain visually discordant man-made alterations, and often provide little interest in terms of two-dimensional visual attributes of the landscape. Levels of vividness, unity, and intactness are below average.

Note: Rating scale based on Buhyoff et al., 1994; U.S. DOT Federal Highway Administration, 1988, and United States Department of Agriculture Forest Service. 1995.

The analysis of viewers, viewing conditions, and viewer sensitivity in each viewing area was structured to consider residential viewers, roadway viewers, and, to the extent to which they are present, recreational viewers. To summarize the insights developed through the analysis of viewer sensitivity, overall levels of visual sensitivity at the various viewpoints were identified as being High, Moderate, or Low. In general, High levels of sensitivity were assigned in situations where turbines would be potentially visible within 0.5 mile or less from residential properties, heavily traveled roadways, or heavily used recreational facilities. Moderate levels of sensitivity were assigned to areas where turbines would be potentially visible within 0.5 to 5 miles within the primary view cone of residences and roadways. In distinguishing between moderate and low levels of sensitivity in the 0.5 to 5 mile zone, account was also taken of contextual factors, including the viewing conditions in the immediate foreground of the view. In areas lying 5 miles or more from the closest turbine, where a wind farm would be a distant and relatively minor element in the overall landscape, a low level of sensitivity was assigned.

The computer-generated simulations used to evaluate the project's aesthetic impacts were developed using the Photomontage module of the WindPro software program, a widely accepted and applied program used for planning and assessing wind generation projects. Existing topographic and site data provided the basis for developing an initial digital model. The Applicant provided site plans and digital data for the proposed wind turbines.

The Wind Pro software used these data to create three-dimensional (3-D) digital models of these facilities. These models were combined with the digital site model to produce a complete computer model of the wind farm. For each viewpoint, viewer location was digitized from topographic maps, using 5 feet as the assumed eye level. The WindPro program overlaid computer "wire frame" perspective plots on the photographs of the views from the Analysis Viewpoints to verify scale and viewpoint location. Digital visual simulation images were produced as a next step based on computer renderings of the 3-D model combined with high-resolution digital base photographs.

The visual simulations prepared to serve as a basis for this analysis reflect the site layout depicted on Figures Vis-1 and Vis-7, which include a total of 64 turbines. These turbines are assumed to have a hub height of 80 meters (263 feet), a rotor diameter of 90 meters (295 feet) and a height to the tip of the blade of 125 meters (410 feet).

In evaluating the "after" views provided by the computer-generated visual simulations and comparing them to the existing visual environment, consideration was given to the following factors in determining the extent and implications of the visual changes:

- The specific changes in the affected visual environment's composition, character, and any specially valued qualities,
- The affected visual environment's context,
- The extent to which the affected environment contains places or features that have been designated in plans and policies for protection or special consideration, and
- The relative numbers of viewers, their activities, and the extent to which these activities are related to the aesthetic qualities affected by the expected changes. Particular consideration was given to effects on views identified as having high or moderate levels of visual sensitivity.

Levels of impact were classified as high, moderate, and low. In general, high levels of aesthetic impacts were assigned in situations in which turbines would be highly visible in areas with sensitive viewers, and would alter levels of landscape vividness, unity, and intactness to the extent that there would be a substantial decrease in the existing level of visual quality. Moderate levels of aesthetic impact were assigned in situations in which turbines would be visible in areas with high levels of visual sensitivity in which the presence of the turbines would alter levels of landscape vividness, unity and intactness to the extent that there would be a moderate change in existing visual quality. Moderate levels of visual impact were also found in situations in which the presence of turbines in the view would lead to more substantial changes in visual quality, but where levels of visual sensitivity were moderate to low. Low levels of visual impact were found in situations where the Project would have relatively small effects on overall levels of landscape vividness, unity, and intactness and/or where existing levels of landscape aesthetic quality are low or where there are low levels of visual sensitivity.

### Short-Term Construction Period Impact

During the construction period, large earth moving equipment, trucks, cranes, and other heavy equipment will be highly evident features in views toward the Project site from

nearby areas. At some times, small, localized clouds of dust created by road-building and other grading activities may be visible at the site. Because of the construction-related grading activities, areas of exposed soil and fresh gravel which contrast with the colors of the surrounding undisturbed landscape will be visible. In close-at-hand views, particularly those seen from the closest residences, the visual changes associated with the construction activities will be highly visible and will have a moderate to high level of visual impact. From more distant viewing locations, the visual effects will be relatively minor and will have little or no impact on the quality of views. It is important to note that because Project construction activities will take place over a period of only 12 months, the construction impacts will be relatively short in duration. After construction is complete, all construction-related debris will be removed from the site and the crane pads adjacent to each tower and any other non-road surface areas disturbed during construction will be replanted to recreate the appearance of their original vegetative cover.

### Long-Term Impacts During the Project Operation Phase

The analysis conducted by EFSEC of the project that was originally proposed and which included a larger number of turbines looked at the project's potential aesthetic effects on a total of eleven viewpoints. From four of these viewpoints, the analysis presented in EFSEC's December 2003 Draft EIS found that the project's aesthetic impacts would be low. These viewpoints were:

- Viewpoint 7 - Iron Horse/John Wayne Trail at Taneum Road,
- Viewpoint 8 - Thorp
- Viewpoint 9 - I-90 at Springwood Ranch
- Viewpoint 10 - Lower Green Canyon Road,

From one viewpoint, Viewpoint 1 - US 97 at Eburg Ranches Road looking north, the level of visual impact was found to be low to moderate.

From three viewpoints, the EFSEC analysis found a moderate level of visual impacts. These viewpoints were:

- Viewpoint 3 - US 97 at the northern end of Bettas Road, looking south
- Viewpoint 5 - Bettas Road
- Viewpoint 6 - SR 10 corridor between Morrison Canyon and Swauk Creek.

From three viewpoints, a moderate to high level of visual impacts was found. These viewpoints were:

- Viewpoint 2 - US 97 north of the gravel pit, looking north
- Viewpoint 4 - view from a residence in Section 35
- Viewpoint 11 - National Forest Lands/view from Forest Service Road 35 looking southwest

It is assumed that because the project that is currently being proposed entails a smaller number of turbines than the project that was evaluated in 2003, that this project's impacts on the views from Viewpoints 7 (Iron Horse/John Wayne Trail at Taneum Road), 8 (Thorp), 9 (I-90 at Springwood Ranch), and 10 (Lower Green Canyon Road) will also be low.

It is also assumed that because a substantial number of the turbines that had been included in the original project layout have been eliminated, the impacts on Viewpoints 5 (Bettas Road) and 6 (SR 10 corridor between Morrison Canyon and Swauk Creek) will not exceed the moderate level of impact that the original project was found to have.

The analysis presented here of the aesthetic impacts of the project that is currently proposed focuses on the three viewpoints where the EPSEC analysis of the project proposed in 2003 found moderate to high impacts: Viewpoints 2 (Highway 97 north of gravel pit, looking north), 4 (view toward southwest from a residence in Section 35), and 11 (Forest Service Road 35). It also evaluates the project's effects on two views where lower levels of visual impact were found, but which are of special interest because of their location along US 97: Viewpoints 1 (US 97 at Eburg Ranches Road, looking north) and 3 (US 97 at the northern end of Bettas Road, looking south). The Project's aesthetic impacts during the operational period are presented in Table Vis-2. As the analysis presented in this table indicates, the revised project now being evaluated would have:

- no visual impact on the view from Viewpoint 2 (US 97 north of the gravel pit, looking north)
- a low level of impact on the view from Viewpoint 3 (US 97 at the northern end of Bettas Road, looking south)
- a low to moderate level of impact on the view from Viewpoint 1 (US 97 at Eburg Ranches Road looking north), and
- a moderate to high level of impact on the views from Viewpoints 4 (view from a residence in Section 35) and 11 (view from Forest Service Road 35 looking southwest).



Table Vis 2

## Analysis of Impacts to Visual Resources During Project Operation

Analysis Views	Existing Level of Visual Quality	Level of Visual Sensitivity	Assessment of Visual Change	Potential Level of Visual Impact
<b>Highway 97 Corridor</b>				
Analysis View 1 (Figures Vis-2a and Vis-2b) Highway 97 at Eburg Ranches Road looking north	Moderately Low	Moderate	Approximately 30 turbines will be visible to one degree or another on the ridge tops in the center of the view at distances of 0.8 to 3 or more miles. The turbines will be sited behind the transmission towers, and in many cases, they will, appear to be either generally similar in scale to these structures. In some cases, they will appear to be slightly larger. Some of the turbines will be visually absorbed by the landscape backdrop, but the rest will be silhouetted against the sky to some degree, which will increase their visual salience. The presence of the turbines will increase the vividness of this view by adding visually striking features. At the same time, the project will reduce the scene's degree of intactness to some extent by introducing a large number of highly visible engineered vertical elements. However, because the pattern that the turbines will form will be consistent with the pattern created by the existing transmission towers, they will not substantially change the scene's degree of visual unity. Overall, the presence of the project will create a low to moderate level of change to the existing character and quality of this view.	Low to Moderate
Analysis View 2 (Figure Vis-32) US 97 north of gravel pit looking north	Moderate	High	Under the version of the project that was submitted to EFSEC in 2003, 9 turbines would have been prominently visible along the ridgeline on the east side of US 97 in this view, creating a moderate to high level of visual impact. Under the project as it is now proposed, those 9 turbines have been eliminated, and as a consequence, the project will no longer have any visual impact on this view.	No Impact

<sup>2</sup> Because under the current project design, no turbines will be visible in this view, only the existing view is presented

Analysis View 3 (Figures 6a and 6b) Highway 97 at northern end of Bettas Road looking south	Moderate	High	3 turbines will be visible in the ridgetop area along the east side of the road. These turbines will be located at distances ranging from approximately 0.9 to 1.2 miles from this viewpoint. These turbines will be seen against the sky at in the mid-distance, and will create a moderate reduction in the visual unity of the view and will alter the view's character to some degree. Because of the limited numbers of turbines visible in this view and because the turbines have an attractive design and will be arrayed in an orderly and uncluttered way their presence will not necessarily create a substantial change in the setting's existing moderate level of visual quality.	Low
Ridgeland East of Highway 97				
Analysis View 4 (Figures 8a and 8b) View looking south from residence in Section 35 at upper end of Elk Springs Road	High	Moderate	In the project as originally proposed, a total of approximately 40 turbines would have been visible from this viewpoint. As review of Figure 8b indicates, under the project that is currently being proposed, the number of turbines visible would be reduced to approximately 15. These turbines would be visible at distances ranging from 1.5 to 4.0 miles. Because of the elevated viewing position, these turbines will be seen against the backdrop of the ridgetop's ground surface. The contrast between the light color of the turbines and the darker color of the ground will create a moderate level of visual contrast, increasing the visibility of the turbines. Because of the elevated position of this viewpoint and its distance from the turbines, the turbines' apparent scale will be consistent with that of other features in the setting. The presence of the turbines will have little effect on the vividness of this view, but will reduce its overall sense of unity and intactness to some extent.	Moderate to High
Wenatchee National Forest Lands				
Analysis View 11 (Figures 6a and 6b) View looking southwest from Forest Service Road 35	Moderately High to High	Moderate to High	Although the level of traffic on this road is not high, the views from this road have a moderate to high level of sensitivity because this road provides access to recreational areas at higher elevations on Table Mountain. From this viewpoint, over 60 turbines will be visible in the valley below at distances ranging from 3.2 to 5.4 miles. Because of the elevated viewing position, these turbines will be backdropped against the ground surface. The contrast between the light color of the turbines and the darker color of the ground will create a moderate level of visual contrast, increasing the	Moderate to High

			visibility of the turbines. Because of the elevated position of this viewpoint and its distance from the turbines, the turbines' apparent scale will be consistent with that of other features in the setting. The presence of the turbines will have little effect on the vividness of this view, but will reduce its overall sense of unity and intactness.	
--	--	--	---	--

## Light and Glare

To respond to the Federal Aviation Administration's (FAA) aircraft safety lighting requirements, the Project will be marked according to guidelines established by the FAA. FAA guidelines for lighting of wind turbines call for lights that flash red (at 2,000 candela) at night. These lights are designed to concentrate the beam in the horizontal plane, thus minimizing light diffusion down toward the ground and up toward the sky. Previously, the FAA has required warning lights to be mounted on the first and last turbines of each string, and every 1000 to 1400 feet on the turbines in between. Under recently released guidelines, the number of turbines requiring night lighting has been reduced. In addition, the revised guidelines do not require daytime warning lighting if the turbines are painted a light color, as is proposed for this project. Figure Vis-7 is a site layout map indicating the turbines that are likely to be marked with night warning lights in response to the FAA's requirements. The exact number of turbines that will require lighting will be specified by the FAA after it has reviewed final Project plans. Aside from any required aircraft warning lights, the turbines will not be illuminated at night.

Based on experience at the nearby Wild Horse Wind Power Project, the number of nighttime aviation warning lights that will be required is likely to be consistent with the number indicated on Figure Vis-7. This number represents a substantial reduction in the number of nighttime warning lights that it had been anticipated would be required for the project as originally proposed. Because the nighttime aircraft safety lights will be limited in number, red, and highly directional, their potential to create skyglow or backscatter will be minimal. The flashing red lights that the FAA requires be operated at nighttime will introduce a new element into the Project area's nighttime environment. At present, the Project site and surrounding area are relatively dark at night. The major sources of light in the area are flood lights and other outdoor lights at the residential properties located in the vicinity of the Project site, and headlights on the surrounding highways. The flashing red lights will be most noticeable in the areas within a mile or so to the Project, and could be perceived as having an adverse effect on views from residential properties in these areas.

The Project's O&M facility and substation(s) will create sources of light in areas where there are no nighttime sources of light other than the headlights of vehicles on adjacent roadways. However, the impacts of the lighting associated with these facilities will not be substantial. As indicated previously, some night lighting will be required for operational safety and security, but mitigation measures would be put into place to restrict this lighting to the minimum required and to attenuate its effects. High illumination areas not occupied on a regular basis will be provided with switches or motion detectors to light these areas only when occupied. At times when lights are turned on, the lighting will not be highly visible offsite and will not produce offsite glare effects because lighting will be restricted by specification of non-glare fixtures, and placement of lights to direct illumination into only those areas where it is needed. The naturalistic plantings of indigenous trees and shrubs to be installed in the areas around these facilities will further reduce the visibility of their night lighting.

## Mitigation Measures

Mitigation measures that have been made an integral part of the Project's design include:

- The current Project layout substantially reduces the number of turbines, and eliminates turbines from areas where concerns had been expressed about the aesthetic effects of the Project as originally proposed.
- During the construction period, areas being graded will be watered down frequently to minimize the creation of dust clouds.
- When construction is complete, areas disturbed during the construction process will be restored to natural appearing conditions
- The wind turbine towers, nacelles, and rotors used will be uniform and will conform to the highest standards of industrial design to present a trim, uncluttered, aesthetically attractive appearance.
- The turbines will have neutral finish to minimize contrast with the sky backdrop.. Because the turbines are most frequently seen against the sky, particularly in close range views where visual concerns are the greatest, the neutral finish is the best choice for minimizing Project aesthetic impacts.
- A low-reflectivity finish will be used for all surfaces of the turbines to minimize the reflections that can call attention to structures in a landscape setting.
- Because of the prevailing wind conditions and the high level of reliability of the equipment being used, the rotors will be turning approximately 80-85% of the time, minimizing the amount of time that turbines will appear to be non-operational, a condition that the public often finds to be unattractive<sup>3</sup>
- The small cabinets containing pad-mounted equipment that will be located at the base of each turbine will have an earth-tone finish to help them blend into the surrounding ground plane.
- The only exterior lighting on the turbines will be the nighttime aviation warning lighting required by the FAA. It will be kept to the minimum required intensity to meet FAA standards. This lighting will conform to the FAA's new standards for marking of wind turbines that will entail lighting far fewer turbines than previously required, and having all the lights be synchronized. No daytime lighting is anticipated, according to the FAA's new turbine lighting Advisory Circular.
- Nearly all of the Project's electrical collection system will be located underground, eliminating visual impacts.
- On the short segments of the electrical collection system that will be above ground, simple wooden poles, non-specular conductors (i.e. conductors that have a low level of reflectivity), and non reflective and non-refractive insulators will be used. One segment of this line parallels two existing sets of overhead high voltage transmission lines and a paved road.
- To the extent feasible, existing road alignments will be used to provide access to the turbines, minimizing the amount of additional surface disturbance required. The roads

<sup>3</sup> This finding is supported by research by Thayer and Freeman (1987), among others.

will have a gravel surface and will have grades of no more than 15%, minimizing erosion and its visual effects.

- The O&M facility building will have a low-reflectivity earth-tone finish to maximize its visual integration into the surrounding landscape.
- The colors of the asphalt and gravel used for circulation and parking areas at the O&M facility will be selected to minimize contrast with the site's soil colors.
- Outdoor night lighting at the O&M facility and the substation will be kept to the minimum required for safety and security, sensors and switches will be used to keep lighting turned off when not required, and all lights will be hooded and directed to minimize backscatter and off-site light trespass.
- At the substation, all equipment will have a low reflectivity neutral gray finish to minimize visual salience.
- All insulators in the substations and on takeoff towers will be non-reflective and non-refractive.
- The control buildings located at each substation would have a low-reflectivity earth-tone finish.
- The chain link fence surrounding the substation will have a dulled, darkened finish to reduce its contrast with the surroundings.
- In the areas surrounding the O&M facility and substations, naturalistic groupings of indigenous trees and shrubs will be established to provide partial screening and to visually integrate the facilities into their landscape settings.

## References

Buhyoff, G.J., P.A. Miller, J.W. Roach, D. Zhou, and L.G. Fuller. 1994. "An AI Methodology for Landscape Visual Assessments" *AI Applications*, 8, 1, pp. 1-13.

EMD. Description of the WindPro software. Available at: [www.emd.dk](http://www.emd.dk). Accessed, November, 2002.

Gipe, Paul B. 2002. "Design As If People Matter: Aesthetic Guidelines for a Wind Power Future". Chapter in Pasqualetti, Martin J, P. Gipe and R.W. Righter, 2002. *Wind Power in View, Energy Landscapes in a Crowded World*, San Diego, California: Academic Press.

Hydro-Quebec and Electricite de France. 1996. *L' integration dans l'environnement des ouvrages de transport d'energie electrique*.

Kittitas County. 1997. *Comprehensive Plan, Volume II*.

Kittitas County. 1997. *Swift Water Corridor Vision*.

Kittitas County. 2001. *Comprehensive Plan, Volume I*.

Pasqualetti, Martin J, P. Gipe and R.W. Righter, 2002. *Wind Power in View, Energy Landscapes in a Crowded World*, Academic Press, San Diego, California.

Sagebrush Power Partners, LLC. 2005. Kittitas County Community Development Services, Rezone Application for the Kittitas Valley Wind Power Project. Field, September 30, 2005.

Thayer, Robert L. and C. M. Freeman, 1987, Altamont, Public Perceptions of a Wind Energy Landscape, Landscape and Urban Planning, 14: 379-398.

Thayer, R. L. J. and H.A. Hansen, 1991, Wind Farm Siting Conflicts in California: Implications for Energy Policy, Davis California.

United States Department of Agriculture Forest Service. 1973. National Forest Landscape Management Volume 1. Washington, D.C.: Superintendent of Documents.

United States Department of Transportation, Federal Highway Administration (FHWA). 1988. Visual Impact Assessment for Highway Projects

Washington Energy Facility Site Evaluation Council (EFSEC). 2003 Kittitas Valley Wind Power Project Draft EIS. Section 3.9 Visual Resources. December, 2003. Available at: <http://www.efsec.wa.gov/kittitaswind/deis/kvdeis.html#deis>.

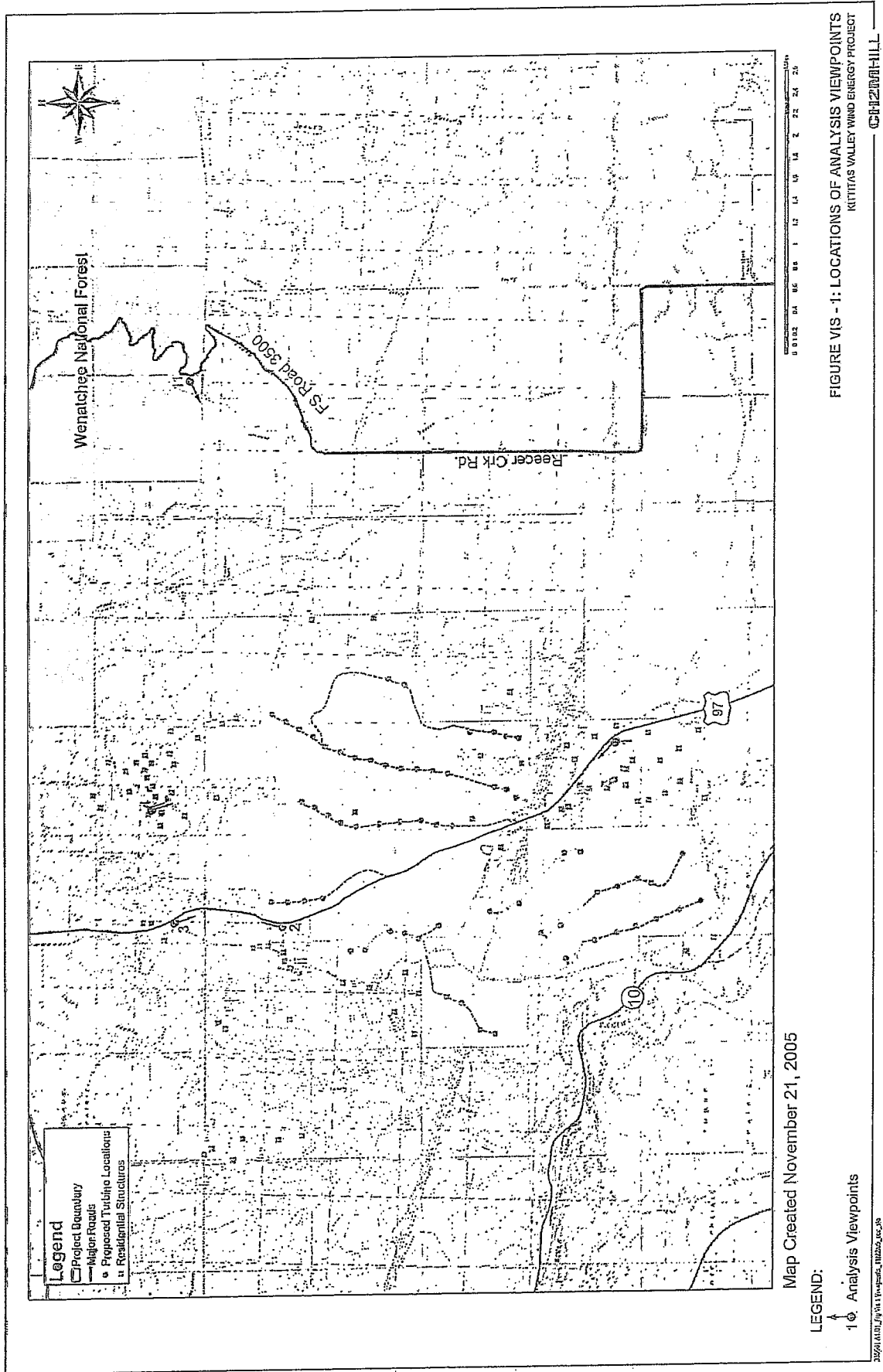


FIGURE VIS - 1: LOCATIONS OF ANALYSIS VIEWPOINTS  
KITITITAS VALLEY WIND ENERGY PROJECT







Figure Vis 3 - Analysis View 2: Existing view from Highway 97 north of gravel pit looking north. With the revisions to the project, no turbines will be visible in this view.

KITTITAS VALLEY WIND ENERGY PROJECT

**CH2MHILL**



Figure Vis 4a - Analysis View 3: Existing view looking south from Highway 97 at intersection with northern end of Bettas Road

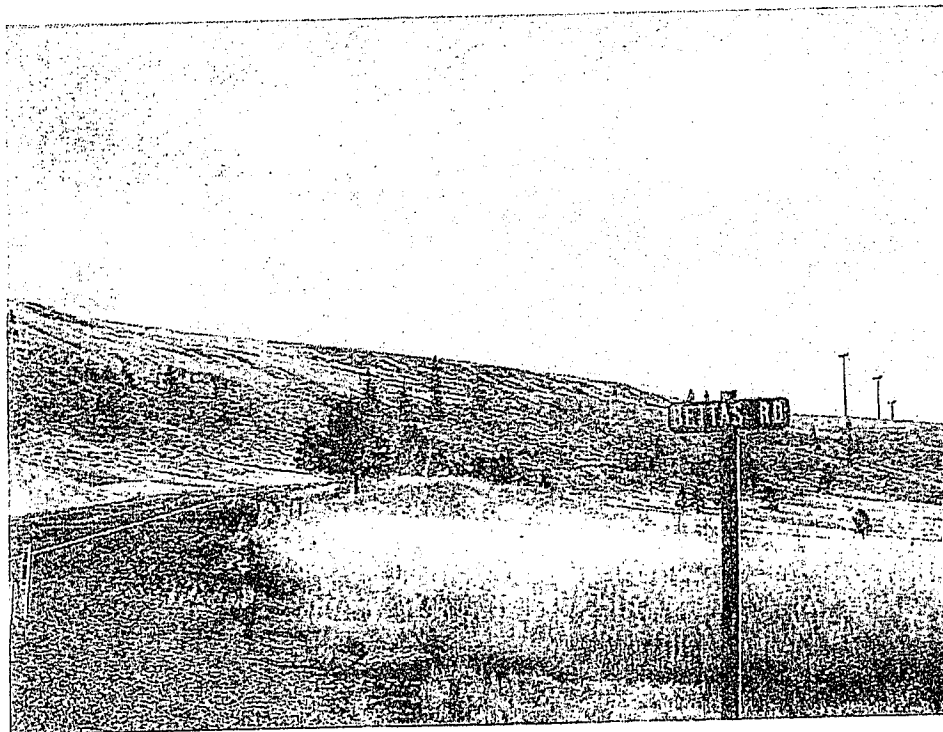


Figure Vis 4b - Analysis View 3: Simulated view looking south from Highway 97 at intersection with northern end of Bettas Road

KITTITAS VALLEY WIND ENERGY PROJECT

CH2MHILL



Figure Vis 5a - Analysis View 4: Existing view looking south from residence in Section 35 at upper end of Elk Springs Road

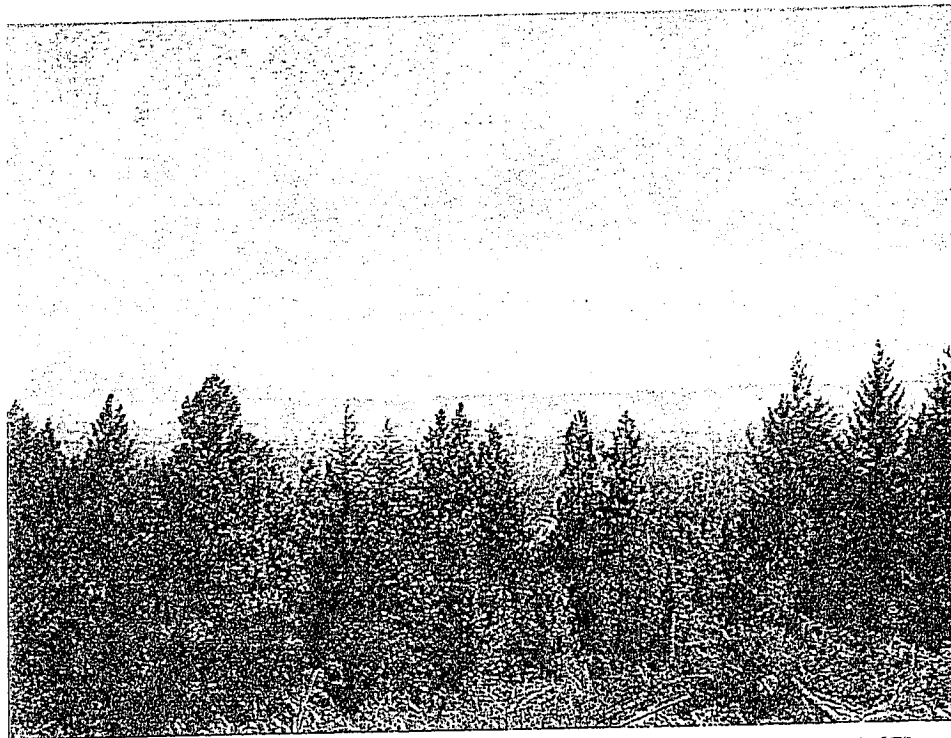


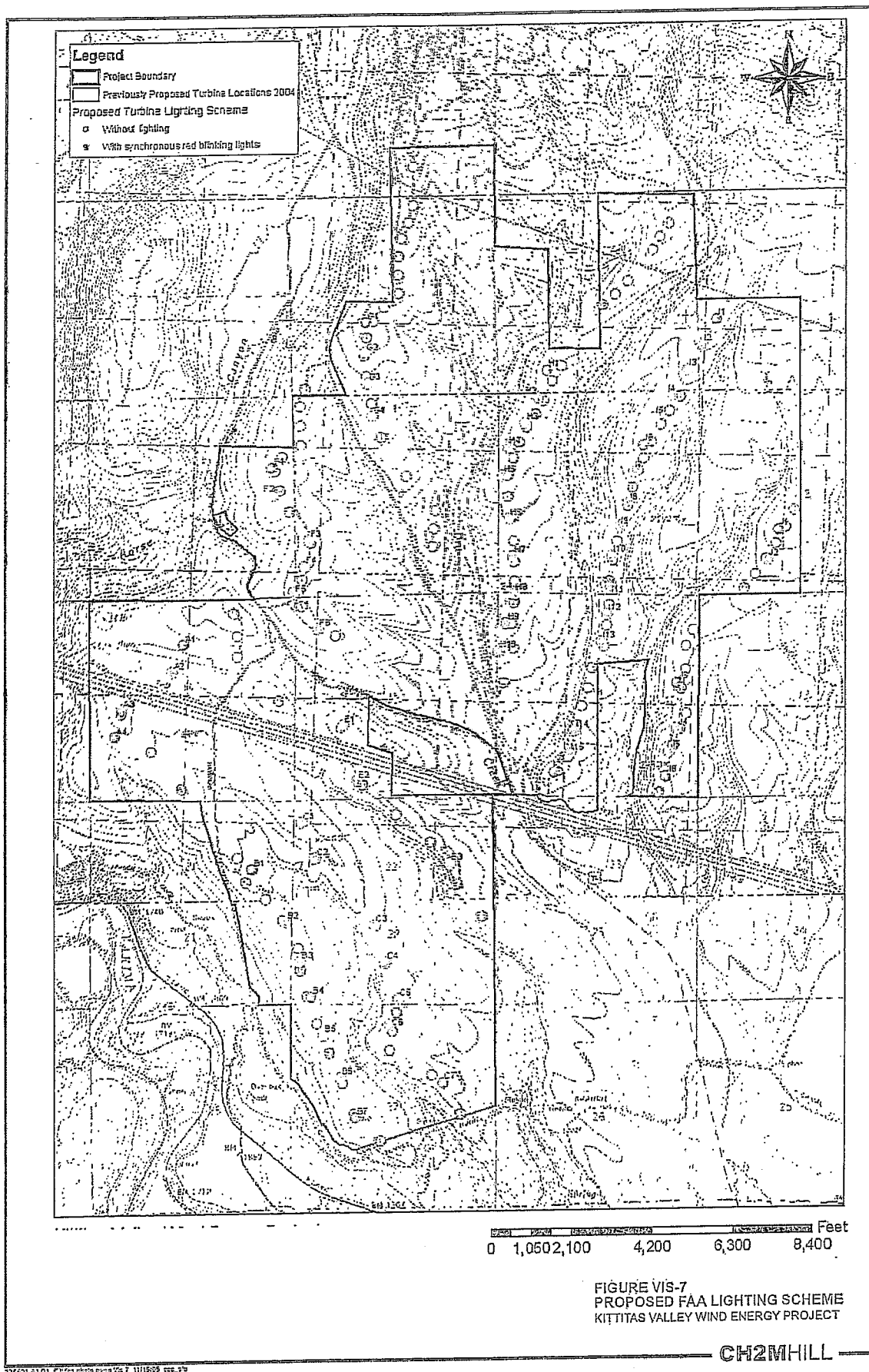
Figure Vis 5b - Analysis View 4: Simulated view looking south from residence in Section 35 at upper end of Elk Springs Road



Figure Vis 6a - Analysis View 11: Existing view toward project from Forest Road 35



Figure Vis 6b - Analysis View 11: Simulated view toward project from Forest Road 35



# EXHIBIT G

### 3.9 VISUAL RESOURCES

This section describes the existing visual environment (aesthetics plus light and glare) in and around the KVVPP area. It assesses the potential for aesthetics and light and glare impacts using accepted methods of evaluating visual landscape quality and predicts the type and degree of changes the KVVPP would likely have. This section also identifies mitigation measures designed to minimize those impacts.

The analysis in this section is based on information provided by the Applicant in the ASC (Sagebrush Power Partners LLC 2003a, Section 5.1.4 and Exhibit 22) and updated simulations provided by the Applicant for a 65-turbine project (Priestley 2005). EFSEC's EIS consultants also verified the information through site visits conducted in March and May 2003. Additional information used to evaluate the potential impacts has been referenced. The visual impact assessment used the Scenery Management System defined in *Landscape Aesthetics, A Handbook for Scenery Management* (U.S. Forest Service 1995) and *Visual Impact Assessment for Highway Projects* (Federal Highway Administration 1988).

#### 3.9.1 Study Methodology

##### Visual Sensitivity Assessment

Each of us views the outdoor environment differently based on who we are as individuals. Although visual impacts are challenging to gauge quantitatively, there are some common qualitative characteristics of beautiful (and not-so-beautiful) scenery on which most people can agree.

Assessing visual sensitivity involves predicting a general impact on the quality of views from a given viewpoint. A combination of three factors determines how sensitive a landscape scene is:

- The number and type of viewers;
- The viewing conditions; and
- The quality of the view.

For example, a dense residential area with unobstructed views of a regionally important and memorable scene would be very sensitive to objects or structures that would impede views. Conversely, a view from a seldom-traveled rural road where motorists have only distant, oblique views of wind turbines in an unremarkable setting would likely qualify as an area of low sensitivity.

The principal types of viewers in the KVVPP area who have predictably high levels of sensitivity to visual impacts include:

- Resident viewers;
- Roadway viewers (drivers and passengers); and
- Recreating viewers such as hikers, rock hounds, and mountain bikers.



Other types of viewers, such as outdoor workers, typically have a low sensitivity to changes in the visual landscape.

This analysis of visual sensitivity defines three levels as follows:

- High levels of sensitivity were assigned in those cases where turbines would be potentially visible within 0.5 mile or less from residential properties, heavily traveled roadways, or heavily used recreational facilities.
- Moderate levels of sensitivity were assigned to areas where turbines would be visible from 0.5 mile to 5 miles within the primary “view cone” of residences and roadways. “View cone” or “cone of vision” refers to the central area that the eye can see clearly without moving and is surrounded by the peripheral vision. In distinguishing between moderate and low levels of sensitivity in the 0.5-mile to 5-mile zone, contextual factors were also considered, including the viewing conditions in the immediate foreground of the view.
- Low levels of sensitivity were assigned to areas 5 miles or more from the closest turbine, where a wind power project would be a distant and a relatively minor element in the overall landscape.

### **Related Policies and Studies**

Under the Kittitas County Comprehensive Plan (Kittitas County 2002a), the project area is designated as Rural, while under the County’s Zoning Code (Kittitas County 1991, as amended by Kittitas County 2002b), the project area is zoned Agriculture-20 and Forest and Range. No specific scenic or visual resource policies are contained in the Comprehensive Plan that would affect the proposed project.

Kittitas County prepared a scenic route corridor plan that includes SR 10. SR 10 is south of the project site along the Yakima River. A planning report for this corridor, titled the *Swift Water Corridor Vision Plan* (Kittitas County 1997), documents its scenic and cultural character and recommends road improvements and development of roadway amenities and interpretive installations. The report does not contain specific recommendations for visual impacts.

The Federal Highway Administration designated the 100-mile segment of I-90 beginning at the Seattle waterfront and extending east to Thorp as a National Scenic Byway in 1998. This highway segment is also a part of the Mountains-to-Sound Greenway. The Greenway, which consists of the corridor along I-90 from downtown Seattle to Thorp, is conceived of as a scenic, historic, and recreation corridor intended to function as a scenic gateway to the Seattle metropolitan area and a pathway to nature for the metropolitan area’s population.

In addition, US 97 in this area is a state-designated Scenic and Recreational Highway. Typically, this designation means that a scenic corridor management plan would be prepared to provide policy-level guidance in the local adoption of comprehensive plan policies, zoning, and other land use regulation. There is no scenic corridor management plan for US 97 and, therefore, no regulatory control of aesthetic impacts within the US 97 corridor. However, the scenic highway designation implicitly carries an additional level of care and scrutiny in the review of potential aesthetic impacts.

### 3.9.2 Affected Environment

Visual resources are the natural and built features open to view in the landscape. The combination of land, water, and vegetation patterns represent the natural landscape features that define an area's visual character, while built features such as buildings, roads, and other structures reflect human or cultural modifications to the landscape. These natural and built landscape features or visual resources contribute to the public's experience and appreciation of the environment.

#### Proposed Action

##### Regional and Local Landscape Setting

###### *Geography*

The KVVPP would be sited on ridges located along the northern edge of the Kittitas Valley, approximately 10 miles to the north and west of the City of Ellensburg. These ridges slope southward toward the valley from Table Mountain, a 6,359-foot-high peak that is part of the Wenatchee Mountain Range to the north. The ridges in the project area range in elevation from 2,160 to 3,445 feet and lie in the area defined by Swauk Creek on the west and Green Canyon on the east. The tops of the ridges have a gentle southward slope incised by steep canyons.

The project area has an open, windswept appearance. Most of the ridge tops on which the project facilities would be located are dry, rocky grasslands used for grazing. Trees and shrubs are found mostly along streams in the canyons. One exception is the forest of predominantly ponderosa pine in the higher elevation areas at the project's northern boundary.

###### *Built Environment*

US 97, a north-south route of regional importance, generally bisects the project area. The most visually prominent built features in the project area, in addition to US 97, are the arrays of electrical transmission lines in the Bonneville and PSE transmission corridors that cross the project area in an east-west direction. Although many portions of the project area are uninhabited, there are several clusters of rural residences on large parcels, most notably along the US 97 corridor just south of the project site, on ridges east of US 97, and along Bettas Road.

Some of the rural residences in and around the project area are accessible by private roads that branch off US 97. For example, Elk Springs Road is a private dirt road that extends along the top of the ridge where turbine string I is proposed. It is gated at US 97 and is accessible only to property owners with a key. Elk Springs Road is used to access residences and recreational properties located at dispersed locations along the ridge and on the forested slopes that lie north of proposed turbine strings G and H in an area referred to as "Section 35." Cricklewood Lane extends from US 97 into the canyon between the ridges where turbine strings I and J are proposed. Cricklewood Lane is not gated in the area from US 97 to the Bonneville transmission line corridor, but north of this area access is restricted by a locked gate.

### Project Site Scenic Quality Assessment

To assess the scenic quality of the landscapes potentially affected by the proposed project, the analyses of views toward the project site from selected viewpoints includes an overall rating of the scenic quality prevailing in the existing views. Scenic quality ratings were developed based on observations in the field, photographs of the affected area, methods for assessment of visual quality, and research on public perceptions of the environment and scenic beauty ratings of landscape scenes. The final assessment of scenic quality was made based on professional judgment that took a broad spectrum of factors into consideration, including:

- Natural features, including topography, watercourses, rock outcrops, and natural vegetation;
- The positive and negative effects of human alterations and built structures on visual quality; and
- Visual composition, including an assessment of the vividness, intactness, and unity of patterns in the landscape, defined as follows:
  - Vividness refers to the memorability of the visual impression received by the viewer from contrasting landscape elements as they combine to form a striking and distinctive visual pattern.
  - Intactness is the integrity of visual order in the natural and human landscape, and the extent to which the landscape is free from visual encroachment.
  - Unity is the degree to which the visual resources of the landscape join together to form a coherent and harmonious visual pattern.

Each viewpoint was assigned a final rating based on the rating scale summarized in Table 3.9-1. This rating scale incorporates landscape assessment concepts developed by the U.S. Forest Service and the U.S. Department of Transportation.

### Viewpoints

To analyze the project's effects on visual resources, viewpoints were selected to characterize the aesthetic character of the project area. The existing views from these viewpoints are described below and illustrated with photographs. Most of the viewpoints are at publicly accessible locations where the most people would view the project. Individual viewpoints were chosen as being the most representative views for the different roads, population areas, and recreation areas where views of the wind turbines would occur. Figures 3.9-1 and 3.9-2 show the locations of these viewpoints from outside and within the project area, respectively.

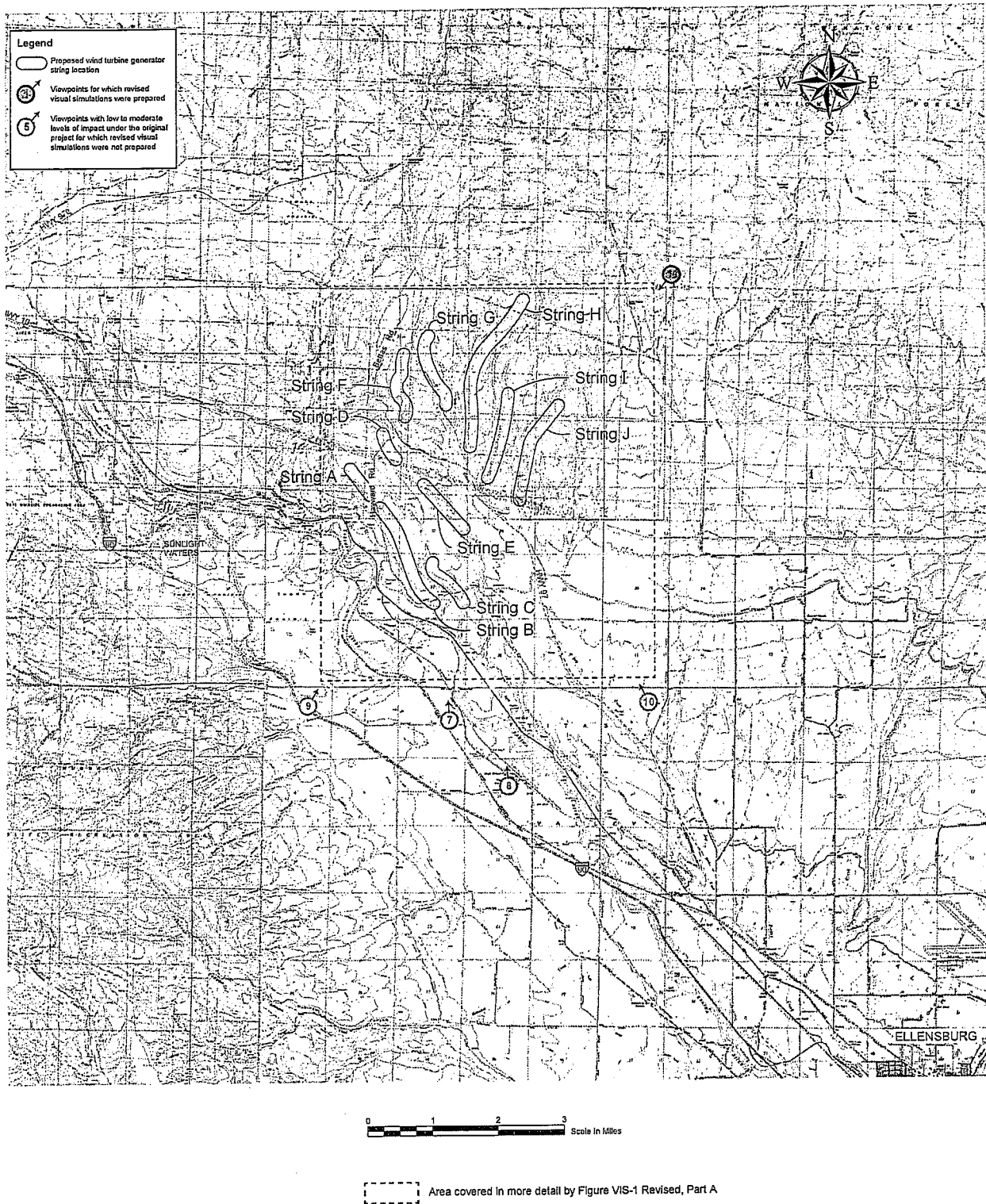


FIGURE 3.9-1  
PHOTOGRAPH LOCATIONS OUTSIDE  
PROJECT AREA



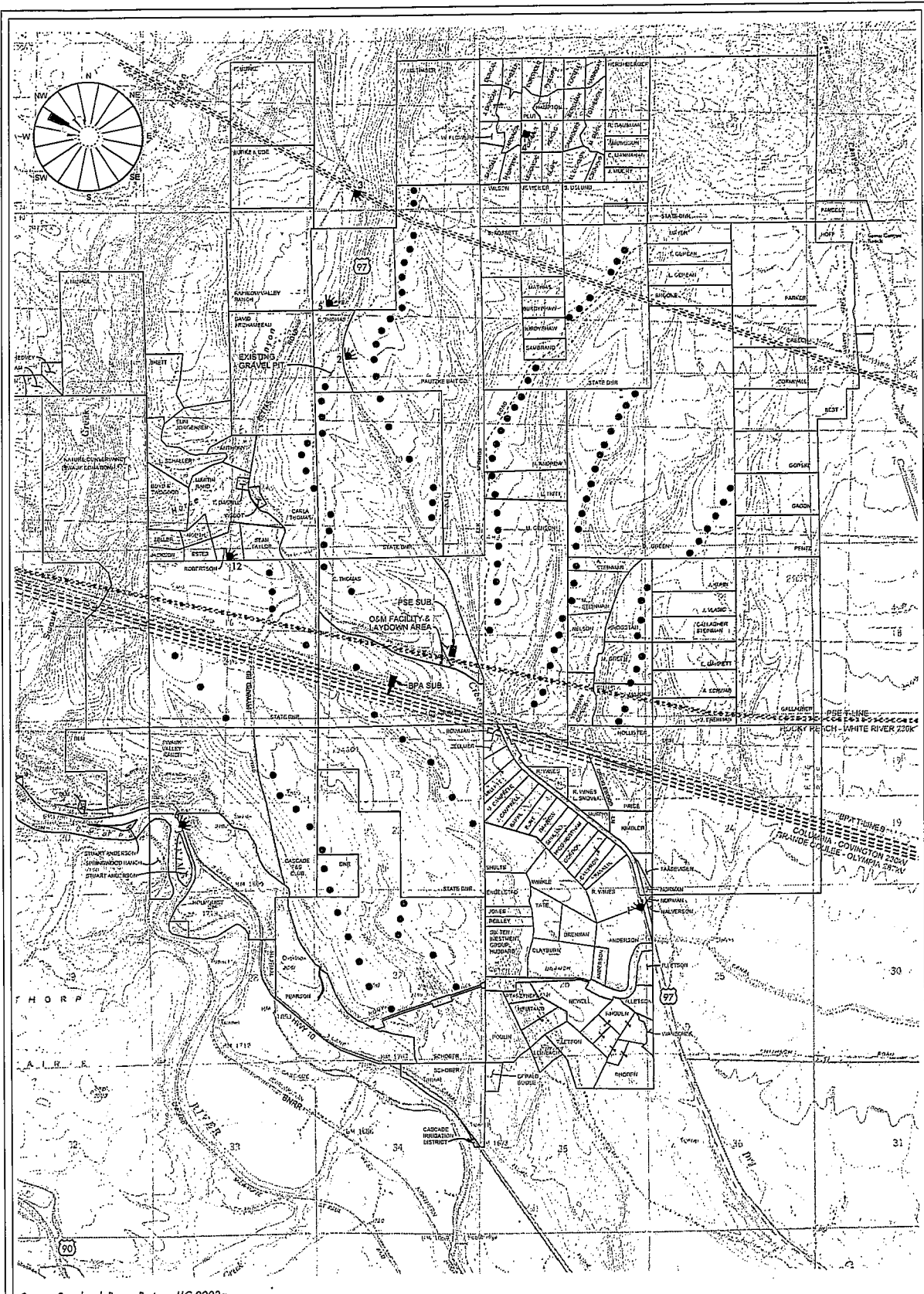
**Table 3.9-1: Landscape Scenic Quality Scale**

Rating	Explanation
Outstanding Visual Quality	A rating reserved for landscapes with exceptionally high visual quality. These landscapes are significant nationally or regionally. They usually contain exceptional natural or cultural features that contribute to this rating. They are what we think of as "picture postcard" landscapes. People are attracted to these landscapes to view them.
High Visual Quality	Landscapes that have high quality scenic value. This may be due to cultural or natural features contained in the landscape or to the arrangement of spaces contained in the landscape that causes the landscape to be visually interesting or a particularly comfortable place for people. These landscapes have high levels of vividness, unity, and intactness.
Moderately High Visual Quality	Landscapes that have above average scenic value but are not of high scenic value. The scenic value of these landscapes may be due to human or natural features contained within the landscape, to the arrangement of spaces in the landscape, or to the two-dimensional attributes of the landscape. Levels of vividness, unity, and intactness are moderate to high.
Moderate Visual Quality	Landscapes that are common or typical landscapes with average scenic value. They usually lack significant human or natural features. Their scenic value primarily results from the arrangement of spaces contained in the landscape and the two-dimensional visual attributes of the landscape. Levels of vividness, unity, and intactness are average.
Moderately Low Visual Quality	Landscapes that have below average scenic value but not low scenic value. They may contain visually discordant human alterations, but these features do not dominate the landscape. They often lack spaces that people perceive as inviting and provide little interest in terms of two-dimensional visual attributes of the landscape.
Low Visual Quality	Landscapes that have below average scenic value. They may contain visually discordant human alterations, and often provide little interest in terms of two-dimensional visual attributes of the landscape. Levels of vividness, unity, and intactness are below average.


Source: Buhyoff et al. 1994; Federal Highway Administration 1988; and U.S. Forest Service 1995.



Graphic Scale: 1 inch = 1 mile. Map Scale: 1:125,000. Date: 10/10/02



Source: Sagebrush Power Partners LLC 2003a


  
0 3000'  
Approximate Scale in Feet

• proposed wind turbine generator location (middle scenario)

1 viewpoint

FIGURE 3.9-2

PHOTOGRAPH LOCATIONS  
WITHIN PROJECT AREA

 SHAPIRO  
& ASSOCIATES, INC.





### *US 97 Corridor: Viewpoints 1 through 3*

Landscape Description and Scenic Quality. US 97 divides the project area and is an important route between Ellensburg and Wenatchee. On an average day, 2,800 vehicles travel the segment of US 97 between Ellensburg and SR 970.

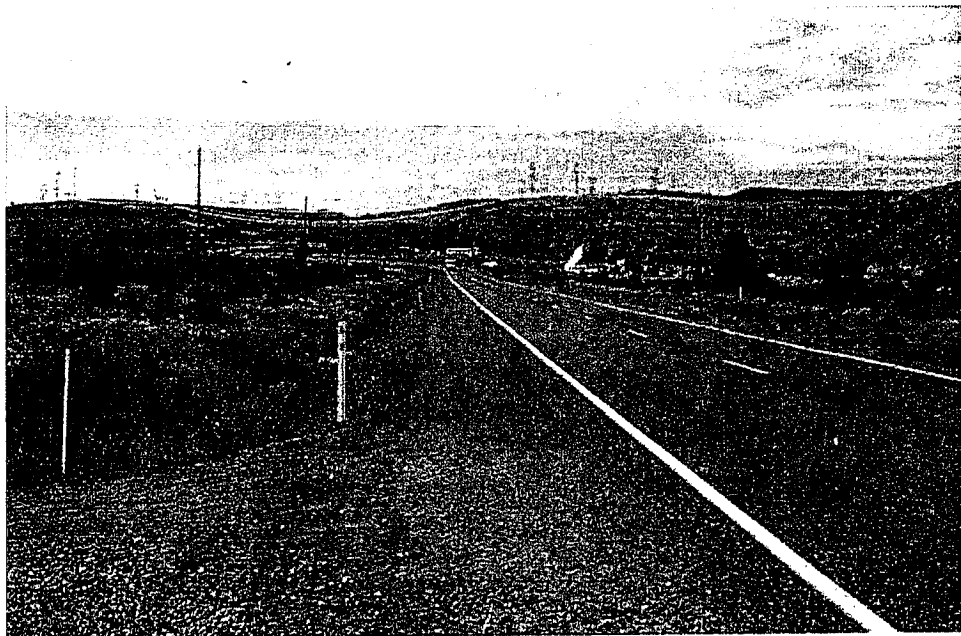
US 97 borders the Dry Creek wash as it passes through the flat and open upper extent of the Kittitas Valley. (Figure 3.9-3 shows the existing view from Viewpoint 1 at Ellensburg Ranches Road, looking north.) Along the stretch of highway approaching the project area from the south, northbound travelers are able to see the grass- and shrub-steppe-covered lower slopes of the ridges that define the valley's northern edge, as well as the forest-covered upper ridge areas. As travelers approach within a mile or less of the project area, the landscape consists of open shrub-steppe lands with dispersed rural residences that are generally highly visible because of the openness of the surrounding landscape. The most visually prominent features in this area are the lattice steel transmission towers on the Bonneville transmission corridor that crosses US 97 and the adjoining ridges along the southern edge of the project area. Along the segment of US 97 that extends from a point several miles south of the project area to the edge of the project area at the Bonneville transmission corridor, the existing visual quality can be generally be classified as moderately low.

As US 97 enters the project area, the corridor along Dry Creek becomes a well-defined valley through the ridges. The highway passes through this valley and up a long, steep slope to a crest at approximately 1,700 feet in elevation where it passes over one of the ridges. At the crest is a privately owned gravel pit and gravel storage area on the west side of the road. In this area, views for northbound travelers to the east are constrained by steep road cuts. (Figure 3.9-4 shows the existing view from Viewpoint 2 at US 97 north of the gravel pit, looking north.) The visual quality in this area is moderate, although farther north along US 97, a more rugged, forested, and visually intact landscape comes into view. In this area, the visual quality is moderately high to high.

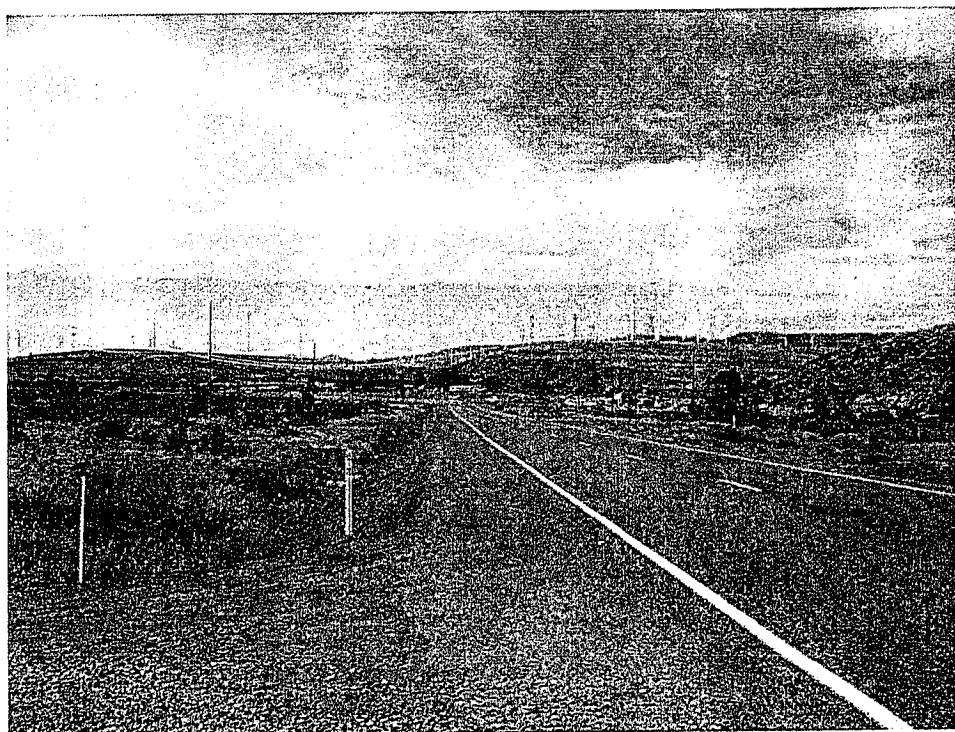
Although the landscape in this area consists primarily of open shrub-steppe lands, there are clusters of ponderosa pine and other trees at scattered locations along the edge of Dry Creek. A single PSE power line carried on wood H-frame towers crosses this area. The existing visual quality in the area along US 97 extending from the Bonneville transmission corridor to the road's crest on the side of the ridge ranges from moderately low to moderate.

Near the intersection with the north end of Bettas Road, this ridge becomes the primary element in the cone of vision for roadway viewers. (Figure 3.9-5 shows the existing view from Viewpoint 3 at US 97 at the north end of Bettas Road, looking south.) South of the intersection with Bettas Road along the base of the ridge, views to the east and to the ridge top become more constrained. The view to the southwest ridge top, however, is more open. Along this segment of the highway, the most salient developed features in the southbound view are the road and road cuts, the Bonneville transmission lines, and the gravel facility at the top of the ridge. Along this segment of US 97, the visual quality of southbound views ranges from moderately high in Hidden Valley to moderate in the area farther to the south.

**Figure 3.9-3: Viewpoint 1 – US 97 at Ellensburg Ranches Road looking north**



Viewpoint 1: Existing view looking north on US 97 at Ellensburg Ranches Road



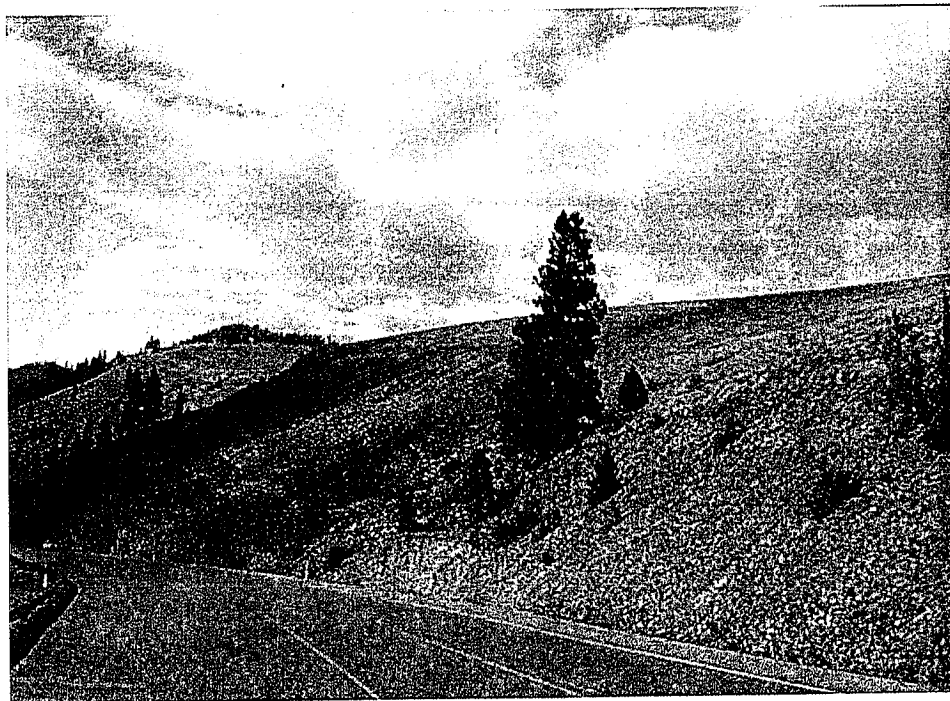
Source: Priestley 2005

Viewpoint 1: Simulated view looking north on US 97 at Ellensburg Ranches Road,  
for 80 410-foot turbines

**Fig 3.9-4 Viewpoint 2: US 97 north of the gravel pit, looking north**

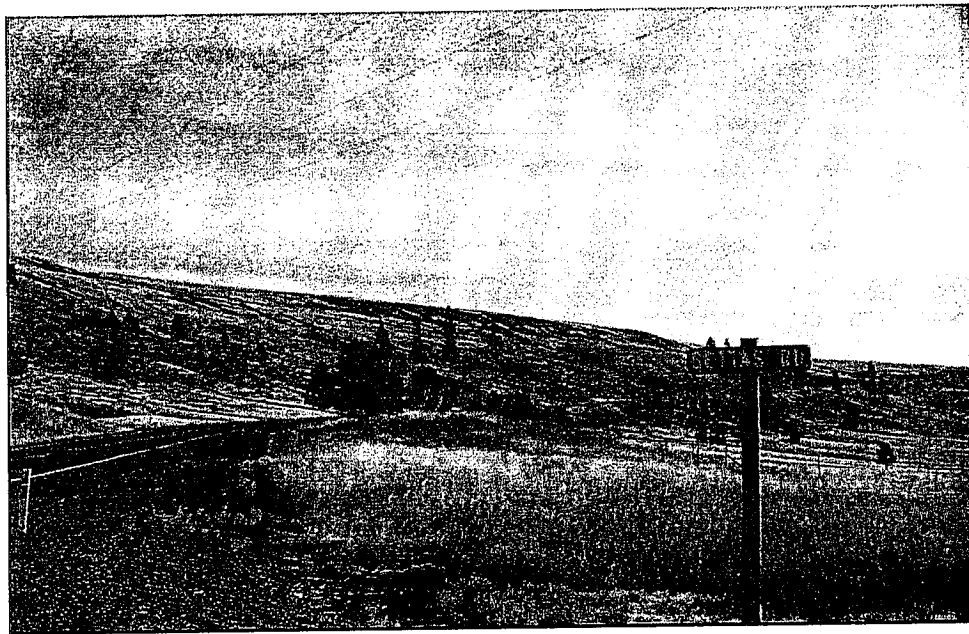


Viewpoint 2: Existing view US 97 north of the gravel pit, looking north

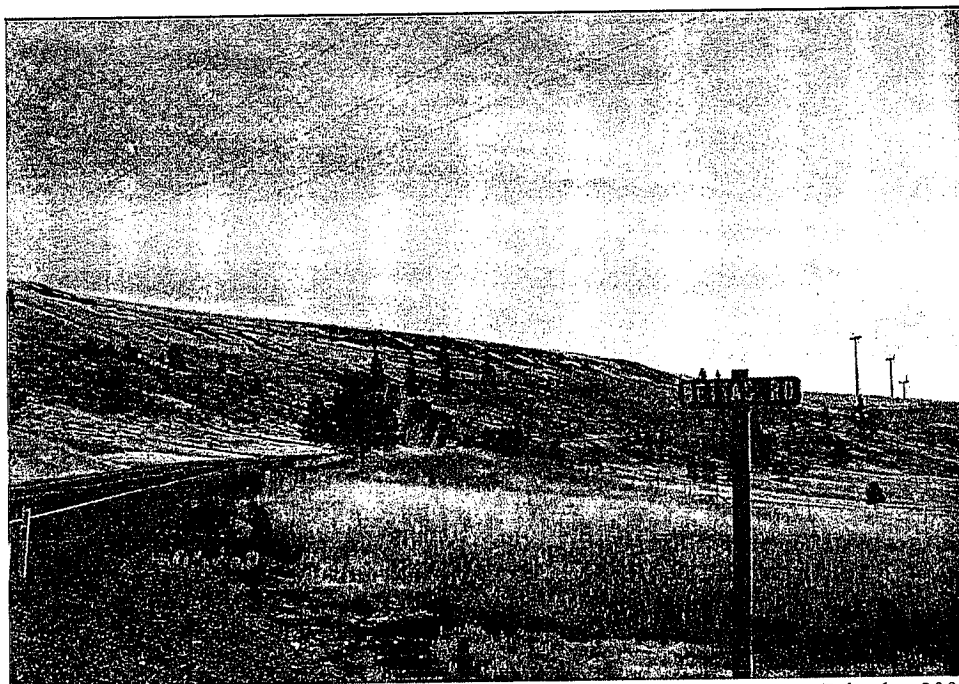


Viewpoint 2: Simulated view US 97 north of the gravel pit, looking north  
(no turbines would be visible)

**Figure 3.9-5: Viewpoint 3 – US 97 at northern end of Bettas Road looking south**



Viewpoint 3: Existing View US 97 at northern end of Bettas Road looking south



Source: Priestley 2005

Viewpoint 3: Simulated View US 97 at northern end of Bettas Road looking south,  
for 80 410-foot turbines

After US 97 crosses over the crest near the gravel facility, views for southbound travelers open up to reveal a panorama to the southwest and then to the south across the ridges and the Kittitas Valley toward Manastash Ridge and other hills and mountains 20 miles or more in the distance. Views toward the ridges to the east where many of the turbines would be located are constrained to some degree by the road cuts. However views toward the ridge top to the west are more open and only partially screened by clusters of trees. Farther south along US 97, the proposed turbines would be out of the southbound traveler's cone of vision. The project's substations and O&M facility become prominently visible in the canyon area at the base of the slope. In this area, the landscape consists primarily of open shrub-steppe land, and the transmission towers in the PSE and Bonneville transmission corridors become prominent elements of the landscape. Along this segment of US 97, southbound views from the highway range from moderate to moderately high on the upper slopes to moderately low in the areas on the lower slopes where the many transmission lines are a dominant element of the view.

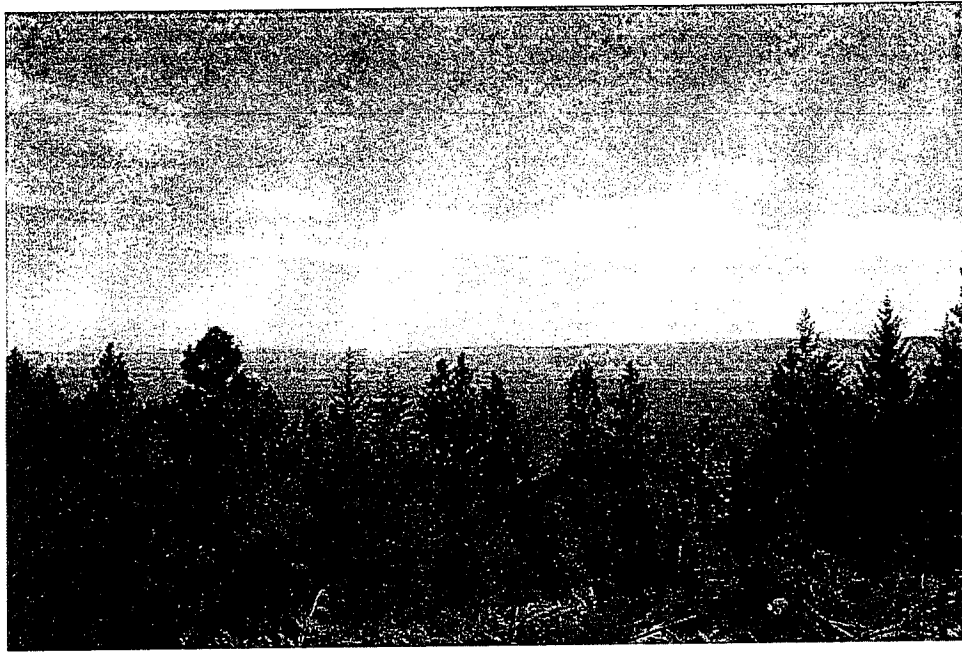
South of the Bonneville transmission lines at the southern end of the project area, some residences are dispersed along the highway corridor. Some of this development lies along Sagebrush Road and Ellensburg Ranches Road, private roads that serve a large-lot subdivision on the slopes to the west of the highway. In this area, there are over 30 lots, of which approximately half have been developed with residences. In general, views toward the project site from residences along both sides of the US 97 corridor have visual quality levels that range from moderately low to moderate.

Visual Sensitivity. For the section of US 97 extending from the intersection with the north end of Nacho Road to a point slightly north of the intersection with the north end of Bettas Road, the highway lies within 0.5 mile of the closest proposed wind turbine. In this area the sensitivity of viewers is rated high. Along the portions of the highway to the north and south of this road segment where travelers are in the zone between 0.5 and 2 miles from the closest turbine, the traveler sensitivity is considered to be moderate. For the most part, the sensitivity of the views from the rural residences in the US 97 corridor in the area south of the Bonneville transmission corridor can be considered moderate because most of these residences are 0.5 mile or more from the closest proposed turbine. The exceptions are several residences at the northern end of Sagebrush Road that lie less than 0.5 mile from proposed turbines E4 and E5. Because of their proximity to these proposed turbines, the visual sensitivity is high.

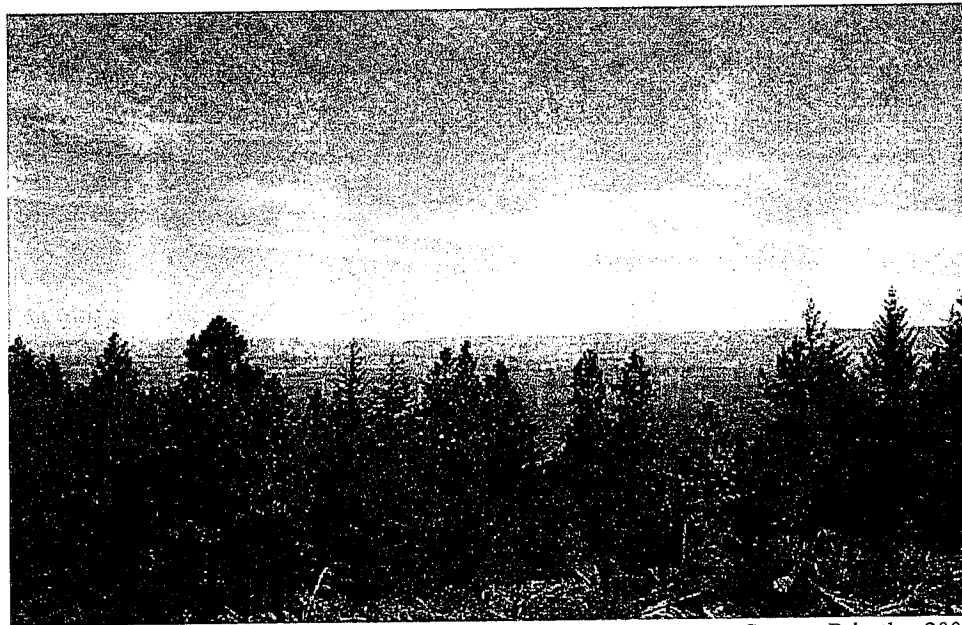
#### *Ridges East of US 97: Viewpoint 4*

Landscape Description and Scenic Quality. This viewing area encompasses the terrain east of US 97 and consists of long, north-south-trending ridges separated by narrow canyons. Most of this area is open in character and covered in grass and shrub-steppe vegetation, although the slopes at the northern end of the ridges are covered with ponderosa pine and other conifers. The most visually prominent developed features in this area are the transmission towers in the Bonneville transmission corridor that runs across the southern ends of the ridges, and the PSE and Bonneville transmission lines that run through the project farther to the north.

Figure 3.9-6 Viewpoint 4 – Ridges East of US 97



Viewpoint 4: Existing view looking south from Section 35 at upper end of Elk Springs Road



Source: Priestley 2005

Viewpoint 4: Simulated view looking south from Section 35 upper end of Elk Springs Road, for 80 410-foot turbines.

The lands in this area are predominantly used for grazing. However, the area also contains a number of scattered rural residences. Cricklewood Lane provides access to some of these residences. Although Cricklewood Lane is a private road, it is not gated in the area from US 97 to the Bonneville transmission line corridor. North of this area, a locked gate restricts access.

Approximately 35 residences and recreational properties are accessible by Elk Springs Road, a private road that is gated at US 97. Several residences are in dispersed locations along the ridge, with the largest single concentration in Township 20 North, Range 17 East, Section 35. This section has been divided into 32 lots ranging from 10 to 60 acres in size. Approximately 20 of these parcels have some kind of structure or a trailer on them. (Figure 3.9-6 shows the existing view from Viewpoint 4 at one of the residences in Section 35 on Elk Springs Road, looking south toward the project area.) The visual quality of the views in this area range from moderately low at the base of the ridges, moderate along the ridge tops, and moderately high to high in locations in Section 35 from which panoramic views to the south are available (see Figure 3.9-6).

Visual Sensitivity. Because portions of Cricklewood Lane and most of Elk Springs Road are in areas with open views that lie within 0.5 mile or less of proposed turbines, the views from these roads are considered sensitive. Because these are private, dead-end roads whose primary function is to provide access to abutting properties, the number of road users affected is assumed to be relatively small. Given the restricted access to these road segments and the small number of viewers, the sensitivity to visual effects is classified as low.

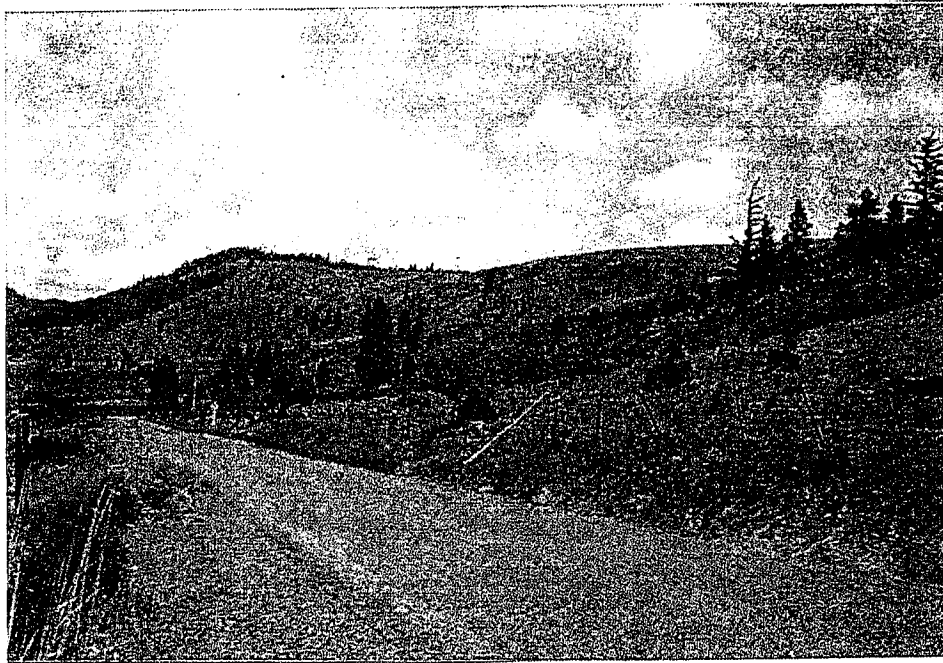
For the 11 residences located along Cricklewood Lane and the lower and middle sections of Elk Springs Road that are within 0.5 mile of the proposed turbines and which would have unobstructed views of them, the sensitivity of views is high. Field studies, aerial reconnaissance, and maps and photographs indicate that in Section 35 heavy tree cover provides partial to full screening of many of the views toward the area where the turbines would be located. Given this tree screening, it appears that there are five existing residences from which the proposed turbines would be potentially visible. Three of these residences lie within 0.5 mile of the proposed turbines, and views from these residences would be considered to have a high sensitivity. Because the other two residences in Section 35 from which the turbines would be potentially visible lie more than 0.5 mile from the closest proposed turbine, the visual sensitivity of views from those properties is considered to be moderate.

#### *Bettas Road: Viewpoint 5*

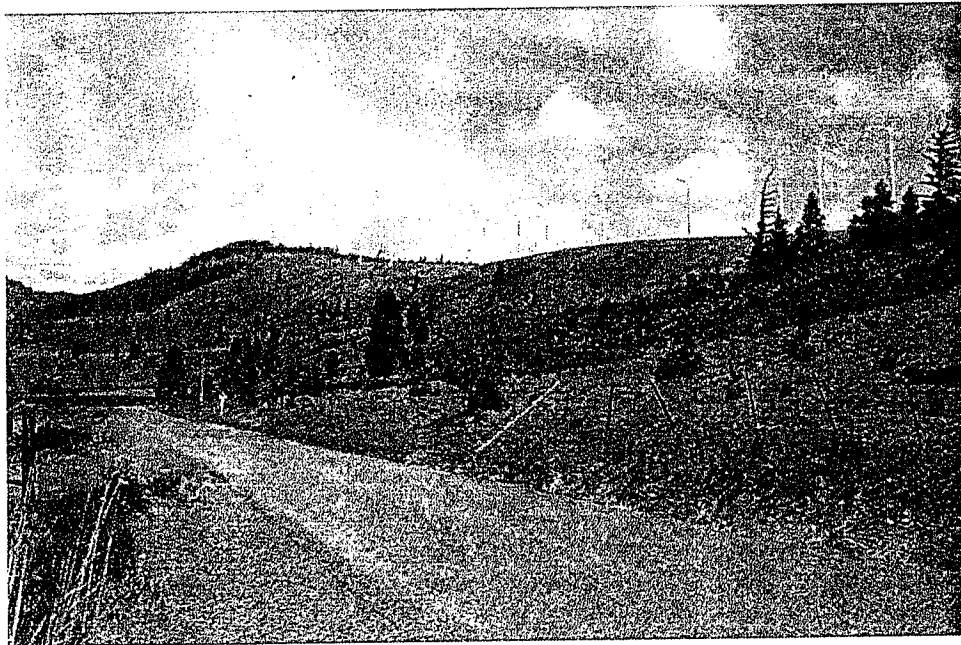
Landscape Description and Scenic Quality. The Bettas Road corridor extends west from the site of the proposed O&M facility and then north to the intersection with US 97. This area is shrub-steppe landscape. After passing over the crest of the ridge, Bettas Road descends into Horse Canyon, a small valley with a rural character. At the southern end of the valley, there is a cluster of five rural residences on ranchette parcels. Farther north along the road, two dwellings are associated with larger ranch properties. (Figure 3.9-7 shows the existing view from Viewpoint 5 in the northern portion of Bettas Road, looking north.) Except for Bettas Road and an existing Bonneville transmission line, this portion of the Bettas Road corridor is undeveloped. In the middle ground of the view, US 97 travels up the slope at the base of the ridge visible to the east.



**Figure 3.9-7: Viewpoint 5 – the northern portion of Bettas Road looking north**



Viewpoint 5: Existing view of the northern portion of Bettas Road looking north



Viewpoint 5: Simulated view of the northern portion of Bettas Road looking north; the simulation, based on the original project of 121 1.5-MW turbines (330 feet high), overestimates the visual impact because fewer turbines would be constructed.

Along this portion of Bettas Road, the visual quality is moderately high, reflecting vivid topographic and vegetative conditions.

Visual Sensitivity. The sensitivity of views on Bettas Road is moderate. Although from most portions of the road turbines would be visible within 0.5 mile, the number of travelers affected is very low. The 2001 average daily traffic on Bettas Road was only 26 vehicles. Some views of the closest turbines would be constrained by the steep slopes along Bettas Road. All of the residences along the Bettas Road corridor are within 0.5 mile, or about 0.5 mile from the closest proposed turbine. From most of the residences, the visual sensitivity is high, but from several that are oriented toward views down the valley to the southwest rather than to views toward the ridgelines to the east and north, the sensitivity is moderate.

#### *SR 10 Corridor: Viewpoint 6*

Landscape Description and Scenic Quality. The project area is visible from SR 10. The section of SR 10 between Ellensburg and Cle Elum is a state-designated Scenic and Recreational Highway. The *Swift Water Corridor Vision Plan* (Kittitas County 1997) identifies measures to develop roadway improvements and amenities that would enhance the road's scenic qualities. Average daily traffic on SR 10 is 1,200 vehicles per day.

With the exception of several dispersed ranch dwellings and clusters of rural residences, the landscape consists of open grasslands and areas of riparian forest. A distinctive cultural element in this area is an old flume structure at the base of the bluffs just to the east of the road. Farther to the northwest, where the highway is at a higher elevation along the side of the bluff defining the river canyon, there is no development, and the landscape is characterized by rock outcrops, clusters of trees and shrubs, and views of the canyon. (Figure 3.9-8 shows the existing view from Viewpoint 6 at SR 10 between Morrison Canyon and Swauk Creek, looking east.) Along this segment of the highway corridor, the visual quality of views toward the project site ranges from moderate to moderately high.

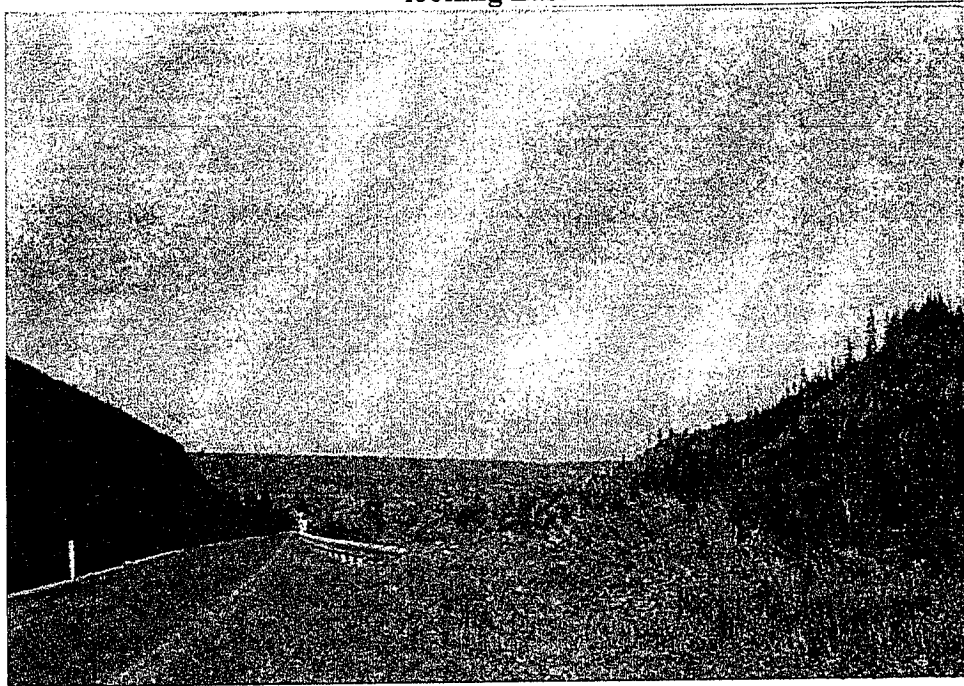
Visual Sensitivity. The sensitivity of views from the highway to the project is high because several short segments of SR 10 are within 0.5 mile of the closest proposed turbine, the highway carries a moderately high level of traffic, and the road is a designated scenic and recreational highway.

The ridges where turbines are proposed are visible from residences along this portion of SR 10. The visual sensitivity of views from these properties is moderate because these residences are typically not in the foreground view and most are not oriented toward the ridge tops.

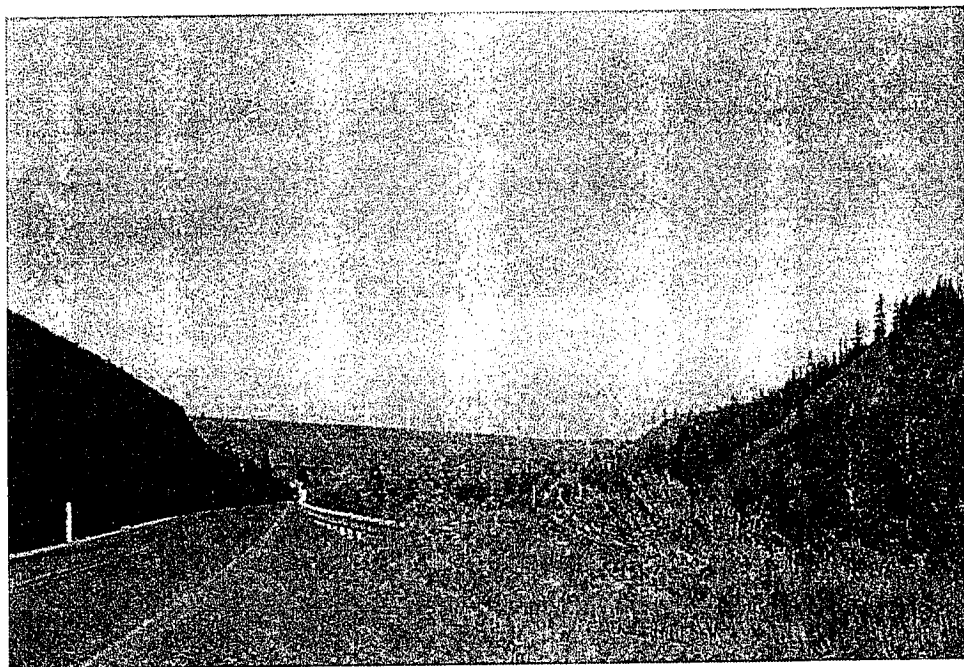
Most of the recreational use of the Yakima River along SR 10 is fishing, although the number of people who fish is apparently low because of poor river access. The sensitivity of views toward the project site from the recreational use areas is low to moderate because:

- The number of recreational users is relatively low;
- Most of the Yakima River is a mile or more from the closest proposed turbine; and
- Many views toward the project site are constrained by steep bluffs and trees along the river.

**Figure 3.9-8: Viewpoint 6 – SR 10 Corridor between Morrison Canyon and Swauk Creek, looking East**



Viewpoint 6: Existing view SR 10 between Morrison Canyon and Swauk Creek, looking east



Viewpoint 6: Simulated view SR 10 between Morrison Canyon and Swauk Creek, looking east; the simulation, based on the original project of 121 1.5-MW turbines (330 feet high), overestimates the visual impact because fewer turbines would be constructed.

### *John Wayne Trail: Viewpoint 7*

Landscape Description and Scenic Quality. The John Wayne Trail is a hiking, biking, and equestrian trail that has been developed in the Iron Horse State Park. The park was created on the former right-of-way of the Milwaukee Road Railroad. The John Wayne Trail extends 109 miles from North Bend to the Columbia River. In the project area, the trail has a wide gravel surface and is adjacent to a power line on wood poles. From most areas of the trail, the ridges on which the project would be developed are visible at a distance ranging from 1 to 5 miles. (Figure 3.9-9 shows the existing view from Viewpoint 7 on the John Wayne Trail at Taneum Road, looking north.) From most areas along the trail, the visual quality of views toward the project site would be rated moderately high.

Visual Sensitivity. Washington State Parks reports that in 2001, the portion of the John Wayne Trail extending from North Bend to Thorp had 163,532 visitors, the segment from Thorp east to Vantage had 21,079 visitors, and that most visits took place during the summer season. Trail use levels for the Thorp area are likely to be lower than the trail section near Snoqualmie Pass. The visual sensitivity of the trail is lower because it has a wide gravel surface and is adjacent to power lines. The trail's visual sensitivity, level of use, and the distance to proposed wind turbines give this viewpoint a low sensitivity to visual impacts.

### *Thorp: Viewpoint 8*

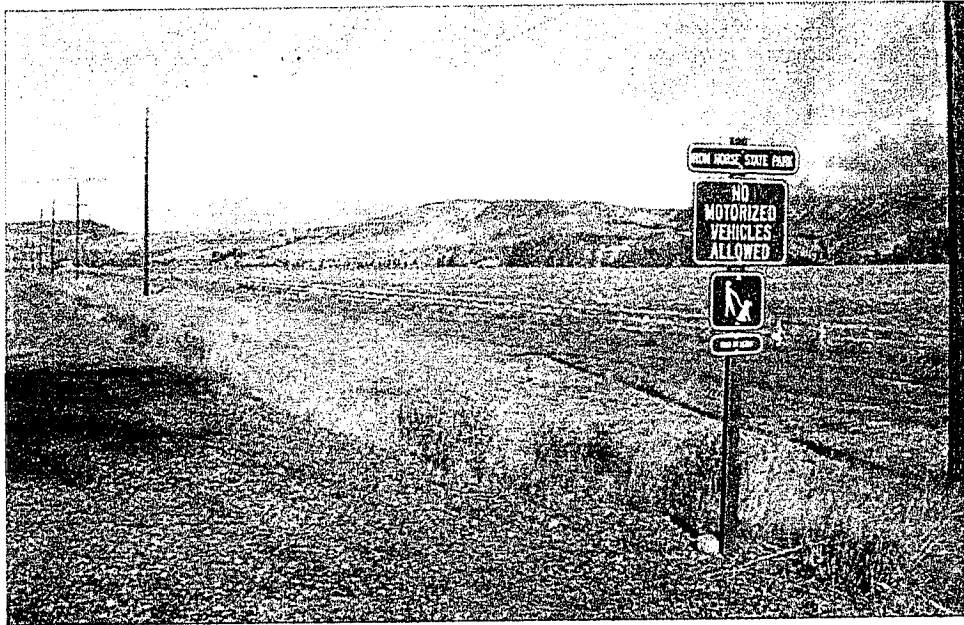
Landscape Description and Scenic Quality. Figure 3.9-10 shows the existing view from Viewpoint 8 at Thorp Highway, looking north. The ridges on which the project is proposed are 3 miles farther to the north and form the backdrop of the view. The visual quality of the view toward the project site is moderate, reflecting moderate levels of vividness, unity, and intactness.

Visual Sensitivity. This viewpoint would qualify as low in visual sensitivity for travelers because:

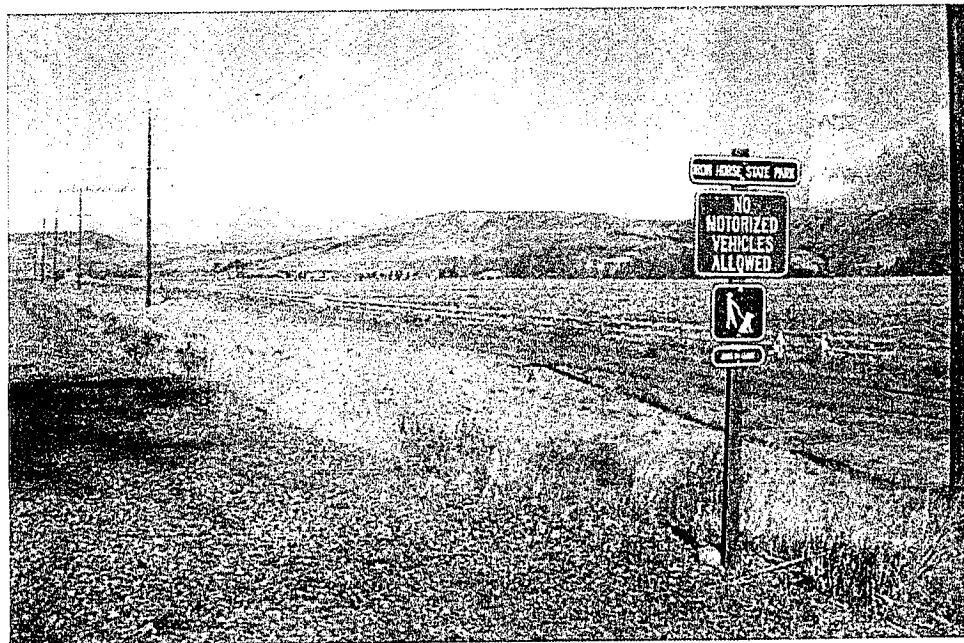
- Traffic levels in this area are fairly moderate;
- The distance to the nearest wind turbines is approximately 3 miles; and
- The project area does not lie within the primary cone of vision of travelers.

Approximately 118 residences are in and near Thorp. Other structures and trees screen views of the ridgeline from many Thorp residences, although some have views of the ridgeline. However, because these ridgelines are distant, the sensitivity is moderate.

**Figure 3.9-9: Viewpoint 7 – John Wayne Trail at Taneum Road, looking north**



Viewpoint 7: Existing view of the John Wayne Trail at Taneum Road, looking north

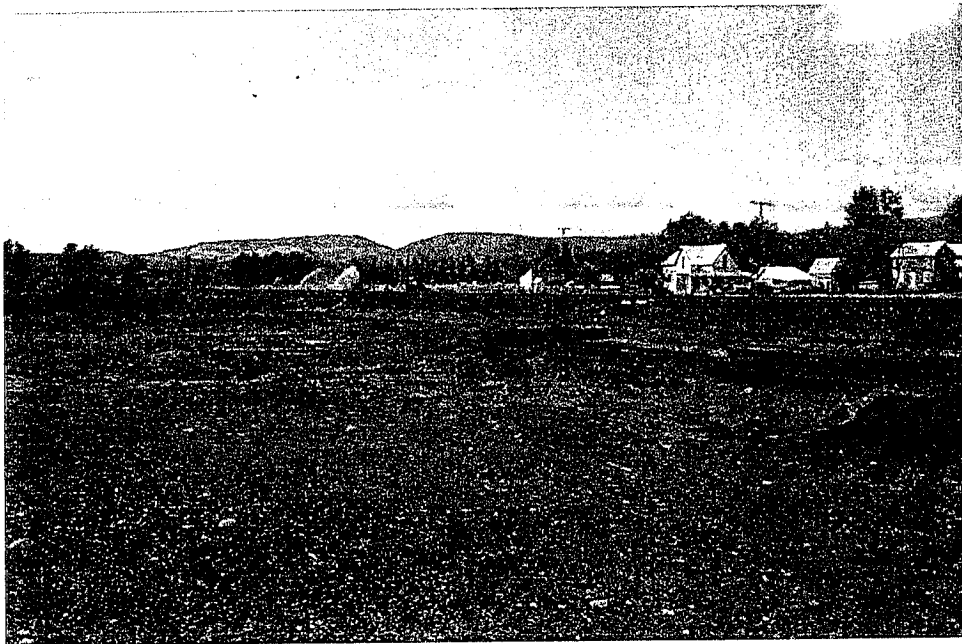


Viewpoint 7: Simulated view of the John Wayne Trail at Taneum Road, looking north; the simulation, based on the original project of 121 1.5-MW turbines (330 feet high), overestimates the visual impact because fewer turbines would be constructed.

**Figure 3.9-10: Viewpoint 8 - Thorp Highway, looking north**



**Viewpoint 8: Existing view of the Thorp Highway, looking north**



**Viewpoint 8: Simulated view of the Thorp Highway, looking north;**  
the simulation, based on the original project of 121 1.5-MW turbines (330 feet high), overestimates the visual impact because fewer turbines would be constructed.

### *I-90: Viewpoint 9*

Landscape Description and Scenic Quality. I-90 is about 2.5 miles south of the project site. The Federal Highway Administration designated the 100-mile segment of I-90 beginning at the Seattle waterfront and extending east to Thorp as a National Scenic Byway in 1998. Traffic on I-90 in this area averages 21,000 vehicles per day. From some areas along I-90, topography and trees in the foreground screen views toward the ridges on which the project would be developed. In many areas, however, the ridges are clearly visible in views across an open valley landscape. The views toward the project area from I-90 are at a right angle to the road and do not fall within the primary cone of vision of drivers.

Figure 3.9-11 shows the existing view from Viewpoint 9 at I-90 and Springwood Ranch, looking northeast. The view is approximately 2.5 miles from the closest proposed turbine location. In this area, the visual quality of views toward the project site is high, reflecting the high vividness attributable to the presence of the peaks of the Stuart Range in the far background of the view, and the view's relatively high levels of unity and intactness.

Visual Sensitivity. The sensitivity of views from this viewpoint is moderate. Although I-90 carries a high volume of traffic and is a designated National Scenic Byway, views toward the project area are not within the primary cone of vision of drivers, and appear in the far middle ground of the view.

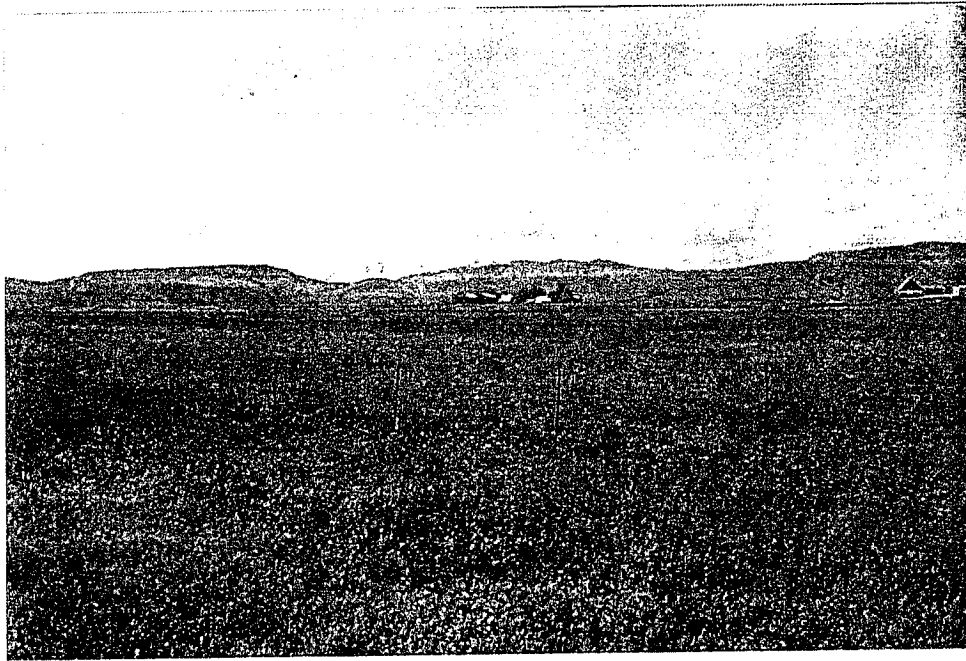
### *Lower Green Canyon Road: Viewpoint 10*

Landscape Description and Scenic Quality. Figure 3.9-12 shows the existing view from Viewpoint 10 along Lower Green Canyon Road, looking northwest. It represents views in the portion of the Kittitas Valley northwest of Ellensburg, where the project area is visible across the flat valley on the hills that frame the northwestern edge of the valley. In the upper valley, viewing distances to the project site range from 2 to more than 8 miles. From Viewpoint 10, the project site is approximately 5 miles in the distance. The upper valley is highly rural in character, and the landscape consists of large farms and ranches and some dispersed small-parcel, non-farm residences. In general, views from this area toward the project site have moderately high to high visual quality.

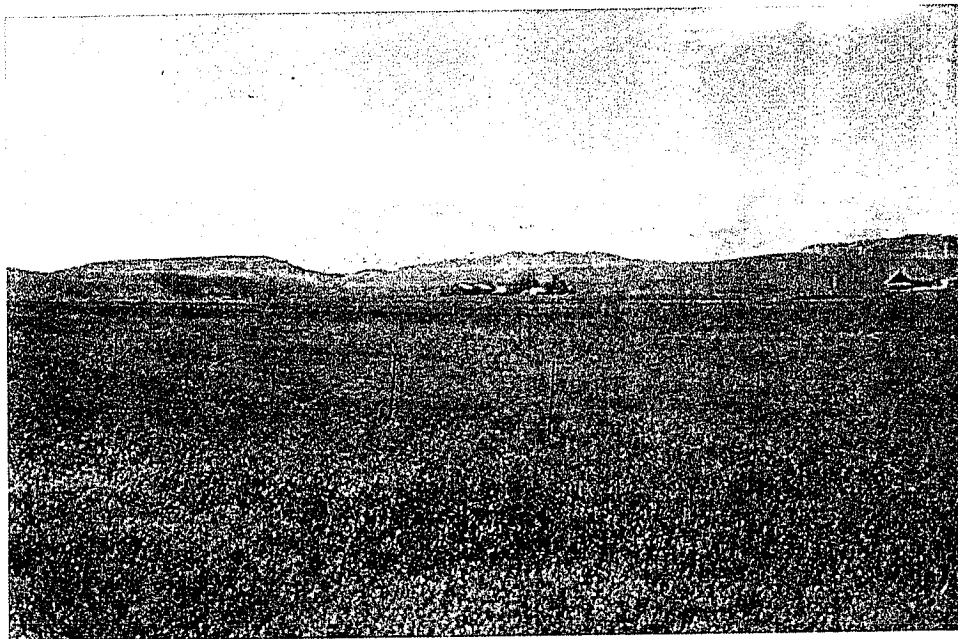
Visual Sensitivity. The sensitivity of this viewpoint to the effects of the proposed project is moderate. Although there are relatively large numbers of residential and roadway viewers in this area, the distance to the proposed turbines reduces the level of sensitivity.



**Figure 3.9-11: Viewpoint 9 – I-90 and Springwood Ranch, looking northeast**



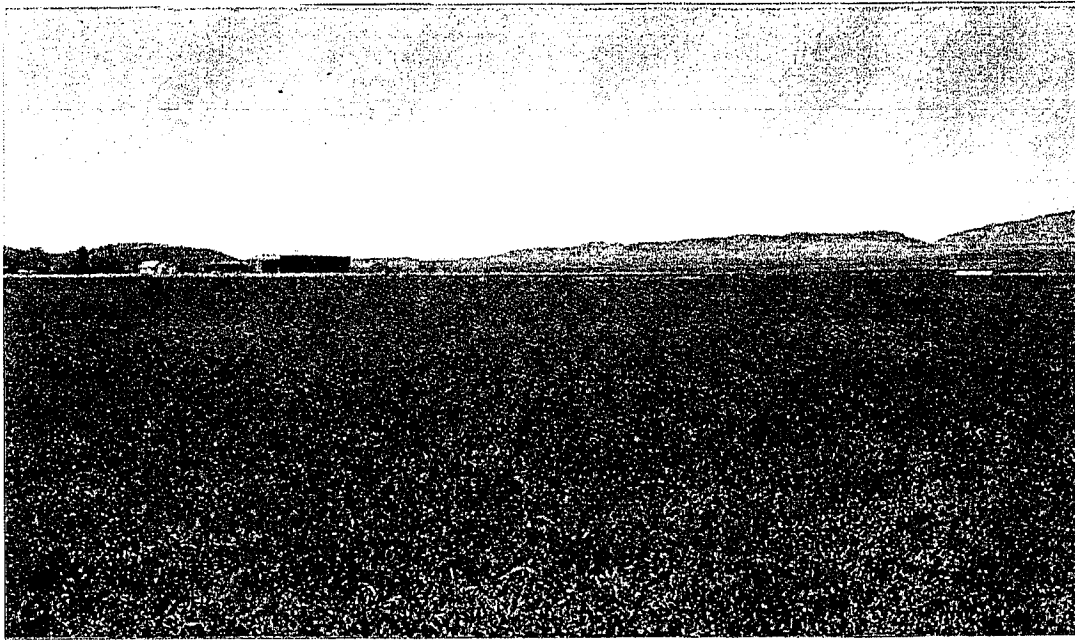
Viewpoint 9: Existing view from I-90 and Springwood Ranch, looking northeast



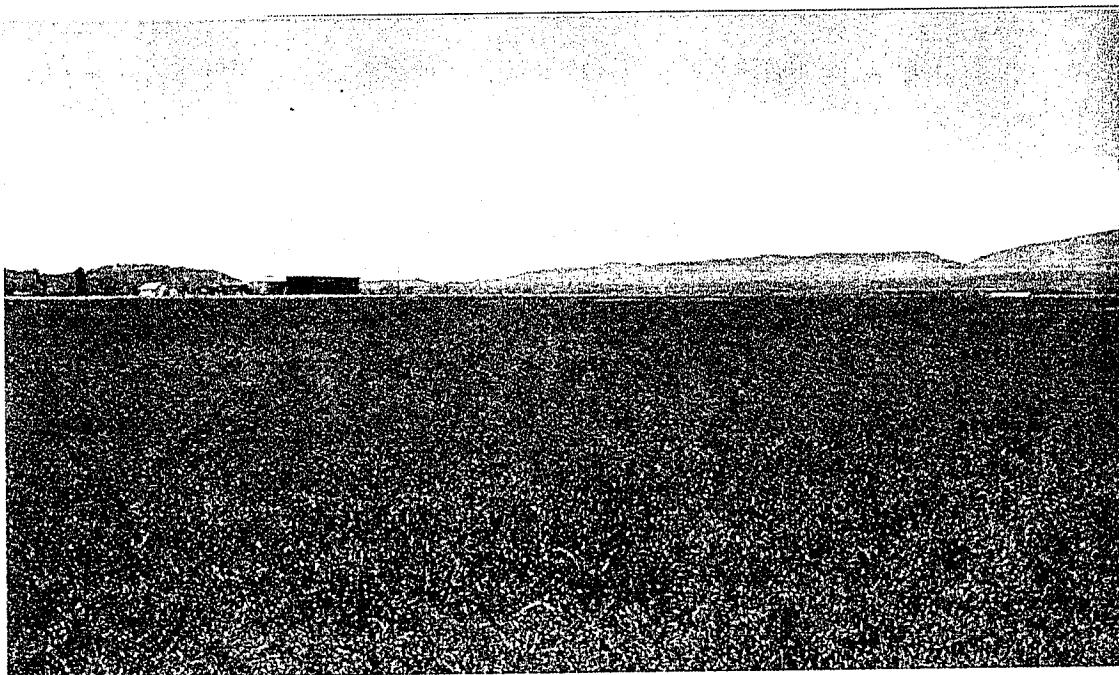
Viewpoint 9: Simulated view from I-90 and Springwood Ranch, looking northeast; the simulation, based on the original project of 121 1.5-MW turbines (330 feet high), overestimates the visual impact because fewer turbines would be constructed.



**Figure 3.9-12: Viewpoint 10 – along Lower Green Canyon Road, looking northwest**



Viewpoint 10: Existing view along Lower Green Canyon Road, looking northwest



Viewpoint 10: Simulated view along Lower Green Canyon Road, looking northwest; the simulation, based on the original project of 121 1.5-MW turbines (330 feet high), overestimates the visual impact because fewer turbines would be constructed.

### *National Forest Lands: Viewpoint 11*

Landscape Description and Scenic Quality. In the project area, the Wenatchee National Forest includes the slopes of Table Mountain to the north and east of the project site. Table Mountain is a popular place for winter sports, hiking, camping, picnicking, and other recreational activities. Lion Rock, an area on Table Mountain that has notable panoramic views, would not have views of the project because of intervening trees and topography.

The National Forest lands closest to the project site are in Section 25, northeast of the large lot residential subdivision in Section 35 at the upper end of Elk Springs Road. This portion of the National Forest is about 1 mile from the closest proposed turbine. Because most of the land in Section 25 slopes into the canyon along First Creek, the project area is potentially visible only from an area of ridge along the southern edge of the forest. At this location, the visibility is reduced by dense forest to the south. The primary access from the valley into the Table Mountain area is via Reecer Creek Road, which becomes National Forest Primary Route 35 at the forest boundary in Section 33. Route 35 traverses Table Mountain in a series of switchbacks with broad views of the Kittitas Valley. (Figure 3.9-13 shows the existing view from Viewpoint 11 at Forest Service Road 35, looking southeast). In general, views from this area would have moderately high to high visual quality.

Visual Sensitivity. Visual sensitivity from this viewpoint would be moderately high because:

- From the road, views are frequent and generally open, with the project site visible in middle ground and foreground areas 3.25 to 6.5 miles to the southwest;
- The turbines would be seen against a backdrop of rural grassland and distant mountains in which there is currently little evidence of human development; and
- Even though much of the recreation in the Wenatchee National Forest occurs farther inside the National Forest boundaries, Forest Route 35 offers numerous opportunities for visitors to view the surrounding valley, whether they are in their vehicles, or stopped at one of the many pullouts on the road.

### *Robertson Property: Viewpoint 12*

Landscape Description and Scenic Quality. This viewing area encompasses the terrain west and east of US 97 and consists of a long, north-south-trending ridge and views of Horse Canyon to the west. US 97 is not visible from this viewpoint. Most of this area is open in character and covered in grass and shrub-steppe vegetation, although a narrow canyon in the foreground view contains a stand of ponderosa pine. Forested low hills are visible in the distant view to the north. The only built features in this view are Bettas Road and several homes with outbuildings. (Figure 3.9-14 shows the existing view from Viewpoint 12 at the Robertson property, looking north-northeast). The scenic quality is intact because Bettas road is narrow and curves with the topography. Land in this general area is used mostly for grazing and contains only a small number of scattered rural residences. Bettas Road provides access to some of these residences. In general, views from this area would have high visual quality.

**Figure 3.9-13: Viewpoint 11- Forest Service Lands**



Viewpoint 11: Existing view Forest Service Lands looking southwest



Source: Priestley 2005

Viewpoint 11: Simulated view Forest Service Lands looking southwest, for 80 410-foot turbines

Visual Sensitivity. Nearby residences at this viewpoint are about 0.5 mile from the closest proposed turbines. The turbines would be located on a prominent ridge at roughly the same elevation as the viewpoint. The views from these residences are considered sensitive. The number of affected residents, however, is relatively small. Certain residences would have a high sensitivity depending on the orientation of their homes, proximity to the turbines, and topography. Given the small number of viewers, however, the sensitivity to visual effects is classified as moderately high.

#### *Scenic Views of Regional Importance: The Stuart Range*

The Stuart Range consists of a series of high snow-covered peaks in the Alpine Lakes Wilderness, approximately 20 miles northwest of the project area. The highest of these peaks is Mount Stuart, with an elevation of 9,416 feet. The elevations of the other major peaks in the range vary from 8,000 to 9,000 feet. The Stuart Range, a highly noticeable and memorable feature, is the most regionally unique feature in the project area landscape.

The Stuart Range is most visible from portions of the Kittitas Valley such as the view from I-90 at Springwood Ranch (Viewpoint 9, Figure 3.9-11) and the view from Lower Green Canyon Road (Viewpoint 10, Figure 3.9-12). The visual prominence of the Stuart Range in these views creates a high level of vividness and overall visual quality.

In the areas closer to the foothills, the peaks in the Stuarts are less visible, and in many places, they are not visible at all. For example, in the community of Thorp located a little over a mile south of the base of the foothills, only the tops of the peaks in the Stuart Range can be seen (Viewpoint 8, Figure 3.9-10). In areas at the base of the foothills, like those along US 97 in the immediate project vicinity, the Stuart Range is not visible at all.

#### *Light and Glare*

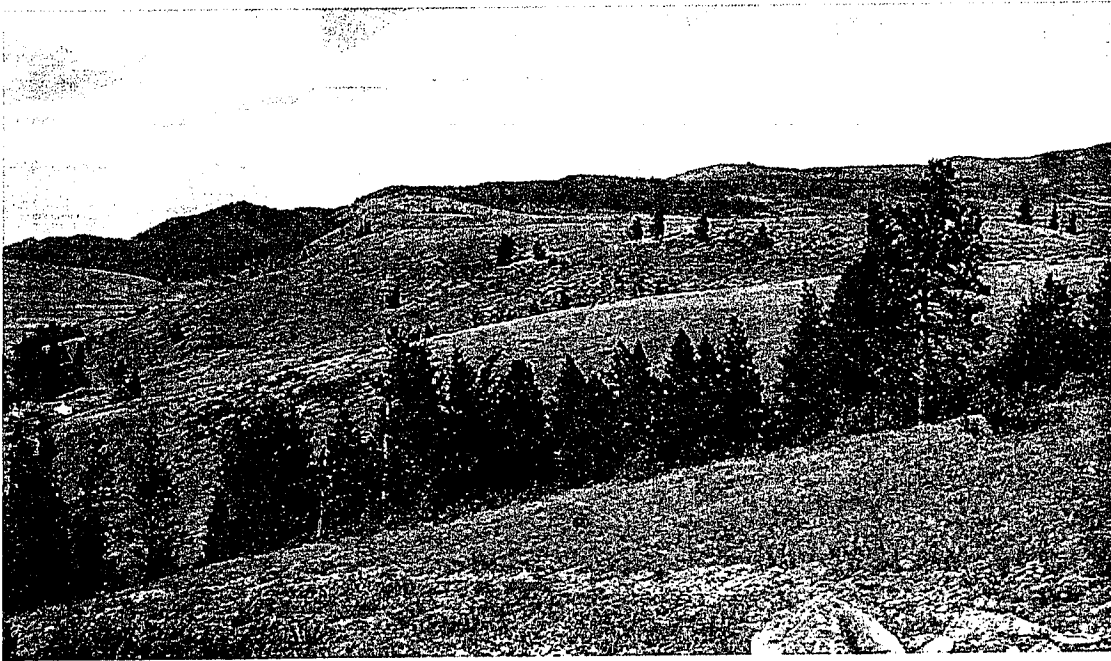
The primary source of light at the proposed project site and in the immediate project vicinity is from vehicle headlights on nearby roadways. Rural residential developments in the project area also contribute to the ambient light environment and, to a small extent, glare from window glass.

### **Offsite Alternatives**

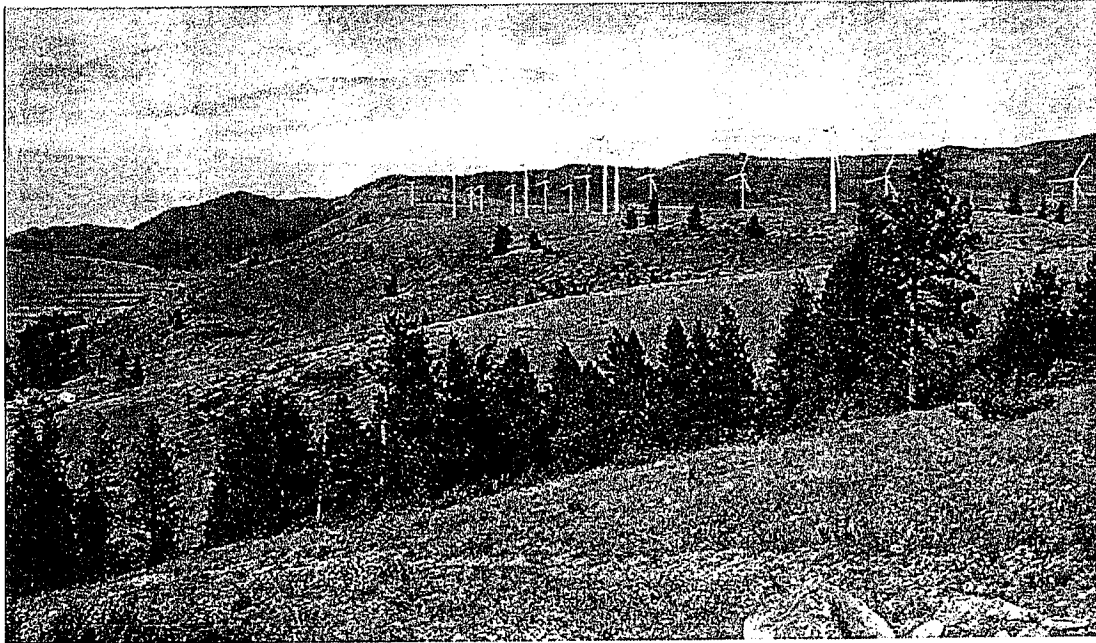
#### Alternative 1: Swauk Valley Ranch

The Swauk Valley Ranch site has an open, expansive appearance similar to the Kittitas Valley site. Steep rocky slopes define the northern, western, and southern boundaries of the site. The northern panhandle portion of the site is heavily forested. The existing electrical transmission lines that cross the site in an east-west direction are the most visually prominent built features on the site. Several rural residences are scattered across the site.

**Figure 3.9-14 Viewpoint 12 - Robertson property, looking north-northeast**



Viewpoint 12: Existing view at the Robertson property.



Viewpoint 12: Simulated view at the Robertson property, looking north-northeast, 80 410-foot turbines

The Swauk Valley Ranch is farther from I-90 than the Springwood Ranch site, but closer than the Kittitas Valley site, and is adjacent to SR 10. Visual impacts were not evaluated for individual viewpoints surrounding the Swauk Valley Ranch site. However, this alternative site is visible from both I-90 and SR 10, as well as from nearby residences.

Existing sources of light and glare in the Swauk Valley alternative site are primarily vehicle headlights on nearby roadways and light associated with residences, including glare from window glass.

#### Alternative 2: Springwood Ranch

The Springwood Ranch alternative site is located on the Thorp Prairie, a relatively broad and flat landscape within the Kittitas Valley, and is adjacent to the Yakima River. Although information regarding specific viewpoints is not available, the southeastern section of the Springwood Ranch alternative site is located directly adjacent to I-90 and the southwestern property line is generally within 0.5 mile of I-90 for its entire length. Views of the property from I-90 are generally unobstructed. SR 10 parallels the property for about 5 to 6 miles, and Springwood Ranch can be viewed from the Thorp Highway. Several homes are also present on or near this alternative site, and the site can be viewed from the community of Thorp.

Outdoor lighting and vehicle traffic associated with the ranch result in a minor source of light and glare. The local road network surrounding the site accounts for the majority of existing light and glare in the vicinity of Springwood Ranch. Other sources of light adjacent to the project site include reflected sunlight during the daytime and illuminated vehicle lights at night from traffic on I-90, Thorp Highway, SR 10, and Taneum Road. Outdoor lighting in Thorp and the residences in the surrounding area contribute to the local nighttime visual environment.

### **3.9.3 Impacts**

#### **Proposed Action**

This analysis examines potential direct aesthetics and light and glare impacts during the construction, operations and maintenance, and decommissioning phases of the proposed KVVPP. Indirect impacts are not anticipated because the project is not expected to substantially induce regional growth to the extent that would result in significant changes to the offsite visual landscape.

For the proposed project, the primary concern is the potential aesthetic and light and glare impacts of the proposed wind turbines. Other project elements such as the O&M facility and substations, 13 miles of new gravel access roads, and additional power lines are discussed only where there is a likelihood that visual impacts would occur.

In both scenarios considered, it is the ability of the landscape in question to accommodate both the size and density of the wind turbines that would determine the resulting visual impacts. Given its dimensions, there is little that can be done to mitigate the visual impact of a wind turbine. Being available to the wind means being in a location that is open and highly visible.

Table 3.9-2 summarizes the existing scenic visual quality assessment for each viewpoint considered, as well as the expected level of visual impact.

### Construction Impacts

#### *Aesthetics*

Onsite activities that would be required during project construction are described in Chapter 2. During construction, large earth-moving equipment, trucks, cranes, and other heavy equipment would be highly visible from nearby areas. At some times, small, localized clouds of dust created by road building and other grading activities may be visible at the site. Because of construction-related grading activities, areas of exposed soil and fresh gravel that contrast with the colors of the surrounding undisturbed landscape would be visible. In close-up views, particularly those seen by travelers on the segment of US 97 that passes through the project site and those seen from the closest residences, the visual changes associated with the construction activities would be highly visible and would have a moderate to high visual impact. From more distant locations, the visual effects would be relatively minor and would have little or no impact on the quality of views.

#### *Light and Glare*

During turbine erection, some days would require double shifts to allow for construction in low wind conditions. Therefore, some construction activities may occur during evening (dusk) or nighttime hours, and lighting may be needed. The effects of construction lighting would be temporary, lasting only during the specific activity period (for turbine erection, estimated at six months).

### Operations and Maintenance Impacts

#### *Aesthetics*

The project has the potential to create high levels of visual impact at 2 of the 12 viewpoint locations analyzed. Not every potential view receptor in the project area has been documented. Selected viewpoints are representative of a variety and range of views in the project area. For example, some commenters during the EIS scoping process requested that visual impacts be described for the area along Reecer Creek Road, east of the project area. The existing and simulated views of the project from Reecer Creek Road are illustrated in Figures 3.14-3 and 3.14-4, respectively, in Section 3.14, Cumulative Impacts. The photos used for the simulations show the worst-case seasonal conditions for visual contrast between the wind turbines and the primarily green and brown landscape backdrop. The period with the least visual contrast is anticipated to occur when there is snow cover and gray skies.

This section rates potential levels of visual impacts from key project viewpoints through the use of simulations. Over the review period for this proposal, the Applicant has submitted several rounds of simulations to represent the visual impacts of the project. For example, the Draft EIS presented simulations of an “upper end scenario”, with 150 smaller turbines being constructed

(EFSEC 2003b). With the Applicant's commitment to cap the total number of turbines to 65 units, with a total height ranging from 330 to 410 feet, simulations representing the "upper end scenario" are no longer relevant, and have therefore not been reproduced in this EIS.

In November 2005, the Applicant also submitted simulations to reflect the project as revised down to a maximum of 65 turbines (Priestley 2005). This new round of simulations was based on the largest turbine being considered, with a hub height of 263 feet, a rotor diameter of 295 feet and a tip height of 410 feet. Since the Applicant has also committed to installing up to 65 turbines, these simulations would remain representative of the visual impacts even if the smaller 330 foot turbines were chosen, because the location and density of the turbines would not change significantly.

As indicated in the figure labels, some of the visual simulations presented in this EIS reflect the originally proposed 121-turbine project, with 1.3- to 1.5-MW (330 foot) turbines, or 80 3 MW (410 foot) turbines. In these simulations, the visual impact is conservatively overstated since fewer turbines will be constructed.

*Viewpoint 1: US 97 at Ellensburg Ranches Road looking north*

See Figure 3.9-3. From Viewpoint 1, approximately 30 turbines from strings I and J would be visible on the ridge tops at distances of 0.8 to 3 or more miles. Figure 3.9-3 illustrates the simulated views from Viewpoint 1 on US 97 at Ellensburg Ranches Road, looking north, for the most conservative scenario of a 65-turbine project, with 410-foot high turbines. At the distance depicted in the photo, the visual clutter of more turbines has more impact than the considerable scale of the larger turbines. Also, about half the turbines would be less noticeable where there is less contrast with the hillside background. The remaining half, however, would be silhouetted against the sky, increasing their visual impact. The presence of the turbines would reduce the scene's degree of intactness by introducing a large number of highly visible engineered vertical elements.

The potential visual impact from Viewpoint 1 would range from low to moderate.



**Table 3.9-2: Summary of Existing Scenic Quality Assessment and Project Visual Impacts**

Viewpoint	Existing Scenic Quality		Anticipated Level of Visual Impact
	Visual Quality	Visual Sensitivity	
Viewpoint 1: US 97 at Ellensburg Ranches Road Looking north (Figure 3.9-3)	Moderately Low	Moderate	Low to Moderate
Viewpoint 2: US 97 north of Gravel Pit Looking north (Figure 3.9-4)	Moderate to High	High	None
Viewpoint 3: US 97 at northern End of Bettas Road Looking south (Figure 3.9-5)	Moderate to Moderately High	High	Low
Viewpoint 4: Ridges east of US 97 (Figure 3.9-6)	Moderately High to High	Moderate	Moderate to High
Viewpoint 5: Bettas Road (Figure 3.9-7)	Moderately High	Moderate to High	Moderate
Viewpoint 6: SR 10 Corridor (Figure 3.9-8)	Moderate to Moderately High	High	Moderate
Viewpoint 7: John Wayne Trail (Figure 3.9-9)	Moderately High	Low	Low
Viewpoint 8: Thorp (Figure 3.9-10)	Moderate	Low to Moderate	Low
Viewpoint 9: I-90 (Figure 3.9-11)	High	Moderate	Low to Moderately Low
Viewpoint 10: Lower Green Canyon Road (Figure 3.9-12)	Moderately High to High	Moderate	Low
Viewpoint 11: National Forest Lands (Figure 3.9-13)	Moderately High to High	Moderately High	Moderately High
Viewpoint 12: Robertson Property (Figure 3.9-14)	High	Moderately High	Moderately High to High

*Viewpoint 2: US 97 north of Gravel Pit looking north*

See Figure 3.9-4. In the original layout described in the Draft EIS, nine turbines in turbine string G would have been visible from Viewpoint 2 on top of the ridge at distances ranging from 0.4 to 1 mile (EFSEC 2003b). These nine turbines have been removed in the revised KVVPP layout. The project would therefore not have any visual impact from this view point.

*Viewpoint 3: US 97 at northern end of Bettas Road looking south*

See Figure 3.9-5. Three turbines in turbine string G would be prominently visible from Viewpoint 3 in the driver's cone of vision along the east side of the US 97. (See Figure 3.9-5) These turbines would be located on ridge tops at distances ranging from 0.9 to 1.2 miles from this viewpoint. Because the turbines would be seen against the sky at relatively close range, they

would be highly visible in this view and would reduce the visual unity to a degree that would substantially alter the scene's existing character.

Because the turbines being viewed are located further away from the Viewpoint the potential visual impact from Viewpoint 3 would be low.

#### *Viewpoint 4: Ridges East of US 97*

See Figure 3.9-6. Approximately 15 turbines would be visible from Viewpoint 4 looking south from a residence in Section 35 at the upper end of Elk Springs Road. (Figure 3.9-6 shows the simulated view from Viewpoint 4 at a residence in Section 35 on Elk Springs Road, looking south.) Three strings of turbines would be visible in the middle ground, and two additional strings would be visible in the far middle ground. Because of the elevated viewing position, these turbines would be seen against the ground surface backdrop. The contrast between the light color of the turbines and the darker color of the ground would create a moderate visual contrast, increasing the visibility of the turbines. Because of the elevated position of this viewpoint and its distance from the turbines, the turbines' apparent scale would be consistent with that of other features in the setting. The presence of the turbines would likely have a moderate effect on the vividness of this view, but would reduce its overall sense of unity and intactness.

The potential visual impact from Viewpoint 4 would be moderate to high.

#### *Viewpoint 5: Bettas Road*

See Figure 3.9-7. Ten or fewer turbines in turbine string G would be prominently visible in the driver's cone of vision along the east side of Bettas Road. (Figure 3.9-7 shows the simulated view from Viewpoint 5 in the northern portion of Bettas Road, looking north.) These turbines would be located in the ridge tops at distances ranging from 0.5 to 1 mile from this viewpoint. Because the turbines would be seen against the sky at relatively close range, they would be highly visible and would reduce the visual unity to a degree that would substantially alter the scene's existing character. The wind turbines would be arrayed uniformly along the ridgeline and would not necessarily create a substantial change in the setting's moderate visual quality.

The potential visual impact from Viewpoint 5 would not exceed moderate.

#### *Viewpoint 6: SR 10 Corridor*

See Figure 3.9-8. Fourteen or fewer turbines in turbine strings B and C would be visible on the ridgeline located 1.5 miles or more from Viewpoint 6 along SR 10 between Morrison Canyon and Swauk Creek. (Figure 3.9-8 shows the simulated view from Viewpoint 6 on SR 10 between Morrison Canyon and Swauk Creek, looking east.) The turbines would be seen against the sky. The presence of the long line of turbines may create a slight increase in the vividness of this view, may have a small adverse effect on the view's unity, and would have a more substantial effect on the view's intactness.

The potential visual impact from Viewpoint 6 would not exceed moderate.

#### *Viewpoint 7: John Wayne Trail*

See Figure 3.9-9. Fewer than 30 turbines in turbine strings A, B, and C and from strings on ridges farther to the north would be visible on the ridgelines located 2 miles and farther from Viewpoint 7 looking north along the Iron Horse/John Wayne Trail at Taneum Road. (Figure 3.9-9 shows the simulated view from Viewpoint 7 on the John Wayne Trail at Taneum Road, looking north.) The closer turbines would be seen against the sky. The more distant turbines would be seen against the slopes of distant hills, and under some lighting conditions, would contrast with the backdrop, increasing the visual impact. The visible turbines would have little effect on this view's vividness, but would reduce its unity and intactness to a slightly greater extent.

The potential visual impact from Viewpoint 7 would be low.

#### *Viewpoint 8: Thorp*

See Figure 3.9-10. Approximately 20 turbines in turbine strings A, B, and C and from strings on ridges farther to the north would be visible on the ridgelines located 3 miles and farther from Viewpoint 8 looking north from the Thorp Highway in the center of the community of Thorp. (Figure 3.9-10 shows the simulated view from Viewpoint 8 on Thorp Highway, looking north.) Most of the turbines would be seen against the sky. However, at this distance, they would have a relatively low visual impact. Some of the turbines would be seen in front of the Stuart Range. However, because of their relatively small size at this viewing distance, they would not likely detract from views toward the Stuarts. The visible turbines would have little effect on this view's vividness, unity, and intactness.

The potential visual impact from Viewpoint 8 would be low.

#### *Viewpoint 9: I-90*

See Figure 3.9-11. 20 turbines in turbine strings A, B, C, and E and from strings on ridges farther to the north and east would be visible on the ridgelines located 2.5 miles and farther from this viewpoint. (See Figure 3.9-11). Some of the turbines would be seen against the sky although the more distant turbines would be seen against the hillsides and under some lighting conditions would contrast with their backdrop, thereby increasing their visual impact. The visible turbines would have a minor effect on the vividness of this view but would decrease the apparent unity and intactness.

The potential visual impact from Viewpoint 9, using gray turbines, would be low.

#### *Viewpoint 10: Lower Green Canyon Road*

See Figure 3.9-12. Almost all of the project's turbines would be visible on the ridgelines in the background of Viewpoint 10, 5 miles or more from Lower Green Canyon Road. (Figure 3.9-12 shows the simulated view from Viewpoint 10 along Lower Green Canyon Road, looking northwest.) Most of the turbines would be seen against the slopes of the ridges and more distant

hills and under some lighting conditions would contrast with the background. At a distance of 5 miles or more, however, this contrast would have little effect on the overall visual impact. Consequently, because the prominence of the turbines in the view would be low, the turbines would have a minor effect on the vividness, unity, and intactness.

The potential visual impact from this viewpoint would be low.

#### *Viewpoint 11: National Forest Lands*

See Figure 3.9-13. Viewpoint 11 illustrates views of the project area from the southern portion of the Wenatchee National Forest on Forest Route 35. (Figure 3.9-13 shows the simulated view for the 330-foot turbine scenario from Viewpoint 11 on Forest Service Road 35, looking southeast.) As this road switches back and forth up the west slope of Table Mountain, the project site becomes increasingly visible. Because of the steep slopes, increasing elevation, and many pullouts on the forest access road, the project site is frequently visible against the broad rural landscape of the valley below. In the plateau areas to the north where recreation areas are located, trees generally screen views to the southwest toward the project site, making the project less visible to recreational visitors.

Much of the project would be seen from Reecer Creek Road and areas of the National Forest used for recreation. Given the moderately high to high scenic quality of this view, the impacts of the project on recreational users of forestlands would be moderately high.

#### *Viewpoint 12: Robertson Property*

See Figure 3.9-14. Turbine strings F and G would be visible from Viewpoint 12 (the Robertson property). String F is on the west side of US 97 and string G runs along a ridge on the east side of US 97. The closest turbines (about 0.5 miles away) in string F would appear in the more highly sensitive zone, although the remaining turbines in strings F and G would be visible at a moderately sensitive distance. Figure 3.9-14 shows the simulated view from Viewpoint 12 at the Robertson property, looking north-northeast, for the, 410-foot turbine scenario.)

The visual impact potential ranges from moderately high to high for the Robertson property (Viewpoint 12). The taller turbines would have comparatively less visual dominance in this scene because the viewpoint elevation is about the same elevation as the turbine sites.

#### *Scenic Views of Regional Importance – The Stuart Range*

Because the Stuart Range is northwest of the project site, the areas from which the project and the Stuart Range have the potential to be seen in the same view are in the region to the southeast of the project's proposed turbine strings. Review of mapped data and the simulations prepared for this project shows that the Thorp vicinity would be the most likely area for turbines to appear in the line of sight of views toward the Stuart Range (Figure 3.9-10). In views from areas farther to the west, such as the John Wayne Trail at Taneum Road (Figure 3.9-9), the Stuart Range would either not be visible at all or not in the line of sight of the turbines.

There is a potential for the wind turbines to appear in the line of sight of the Stuart Range in views from residences on the tops of the ridges southwest of the turbines. Some of the residences along Sagebrush Road and Ellensburg Ranches Road west of US 97 could have turbines in the line of sight toward the peak of Mount Stuart.

Most of the residential properties east of US 97 are north of the proposed turbine strings. Therefore, the turbines would not obstruct views of the Stuart Range from these parcels.

### *Light and Glare*

#### Light.

The Draft EIS explained that to comply with the Federal Aviation Administration's (FAA) aviation safety lighting requirements, the project turbines must be marked with lights. The Draft EIS anticipated that white lights would be required during the day, and red lights at night. Under recently released guidelines, the FAA would no longer require daytime lighting of the turbines if turbines are painted a light color. The applicant is proposing to paint the turbines a light color. Nighttime lighting would be limited to the first and last turbine of every string, and to turbines located every 1000 to 1400 feet between the ends of the strings (Patterson 2005).

As a result of these FAA changes, the KVVWP would no longer install white daytime aviation warning lights, and the number of red nighttime aviation warning lights would be significantly reduced. Only 16 nighttime warning lights would be required as shown in Figure 3.9-15.

The FAA has already concluded that the project would not interfere with aviation operations (FAA 2002). After reviewing final project plans, the FAA would determine the exact number of turbines that would require lights.

The flashing red lights would be a new visual element into the project area's nighttime landscape. At present, the project site and surrounding area are relatively dark at night. The major sources of light in the area are outdoor lights at the residential properties and headlights on the surrounding roads. The flashing red lights would be most noticeable within 1 mile of the project and are likely to have an adverse effect on views from residential properties in these areas.

Other project facilities that would require outdoor lighting at night for operational safety and security include the proposed O&M facility and substations. These facilities would create sources of light in areas where there is no nighttime lighting other than vehicle headlights and would contribute to the overall increase of nighttime illumination in the project area. This impact would be the same regardless of the size of turbine ultimately chosen for the project.

Shadow flicker caused by wind turbines is defined as alternating changes in light intensity as the moving blade casts shadows on the ground and objects (including windows at residences). Section 3.4, Health and Safety, examines the potential effects of shadow flicker for residents near the proposed project and recommends measures for minimizing these effects.

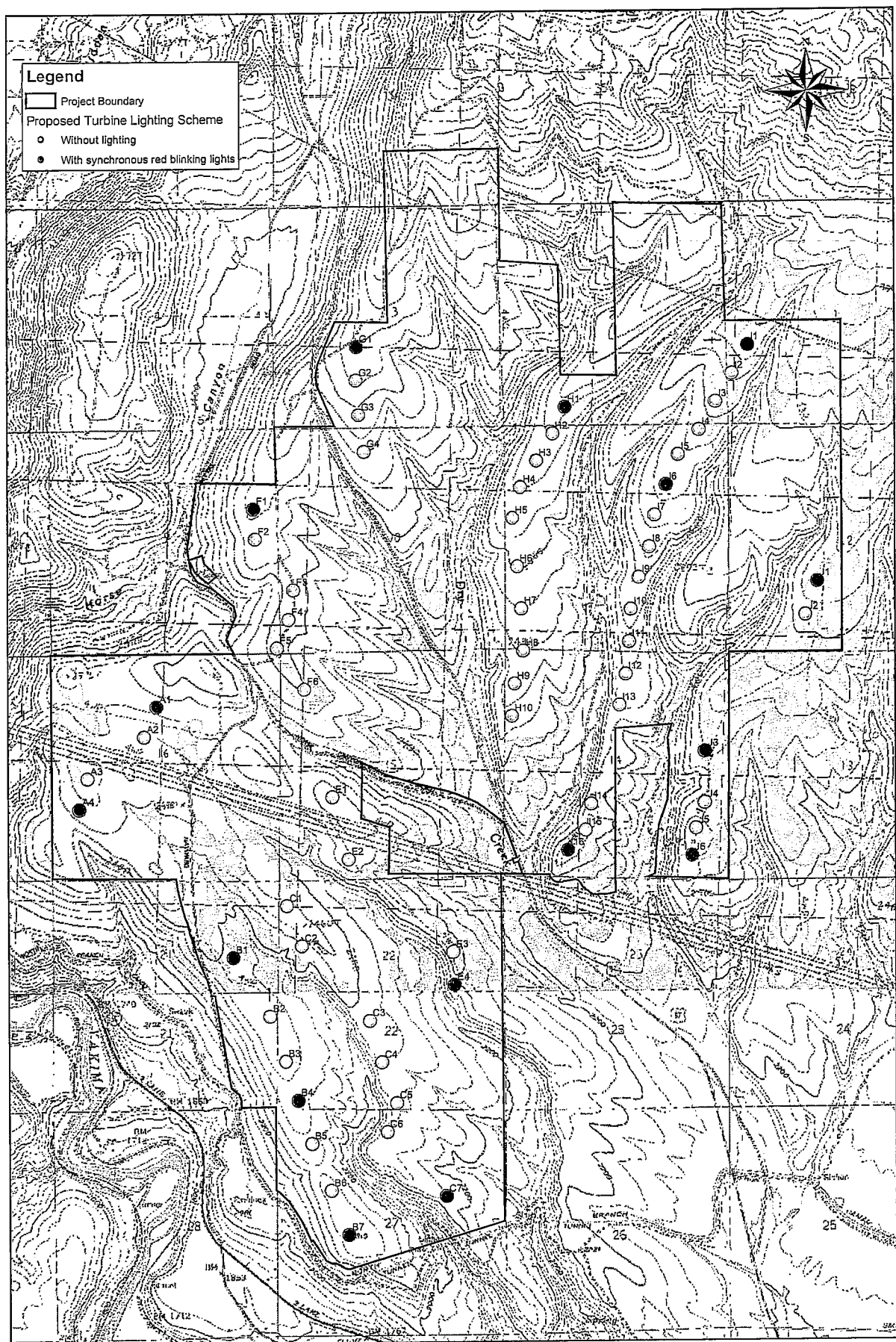


Figure 3.9-15:  
Kittitas Valley Wind Power Project  
Proposed FAA Nighttime Lighting of Turbines  
Source: Schafer 2005d

0 1,050 2,100 4,200 6,300 8,400 Feet



Glare. The proposed project facilities, including turbines, substation equipment, aboveground electrical collection system, and O&M facility have the potential to be constructed of materials that could create a new source of glare in the project area.

Simulations were prepared to compare the impact of different colors for the turbines. Figure 3.9-16 illustrates simulations for gray and light brown finishes. Although the brown color reduces visual contrast in views where the turbines are seen against a landscape backdrop, it accentuates the visibility of the turbines in views where they are seen against the sky. Because the turbines are most frequently seen against the sky, particularly in close-range views where visual concerns are the greatest, the gray finish is recommended as the better choice for minimizing aesthetic impacts (see Section 3.9.4, Mitigation Measures). In addition, the brown color would have a significantly greater contrast when snow is on the ground.

Section 3.9.4, Mitigation Measures, summarizes the proposed mitigation measures to minimize potential glare impacts.

#### Decommissioning Impacts

Decommissioning would consist of removing above ground equipment such as turbine and meteorological towers and their associated foundations to a depth of 3 feet below ground. Wind turbine foundations below 3 feet would remain. The ground surface would be regraded to natural contours and revegetated to a natural condition.

For several years after decommissioning, site disturbance would be visible upon close examination. The visual impacts of those aboveground elements that are not removed would remain. During the decommissioning process, similar impacts to those experienced during construction would occur but to a lesser extent because less construction material would be removed than was delivered to the wind turbine sites.

#### **Offsite Alternatives**

##### Alternative 1: Swauk Valley Ranch

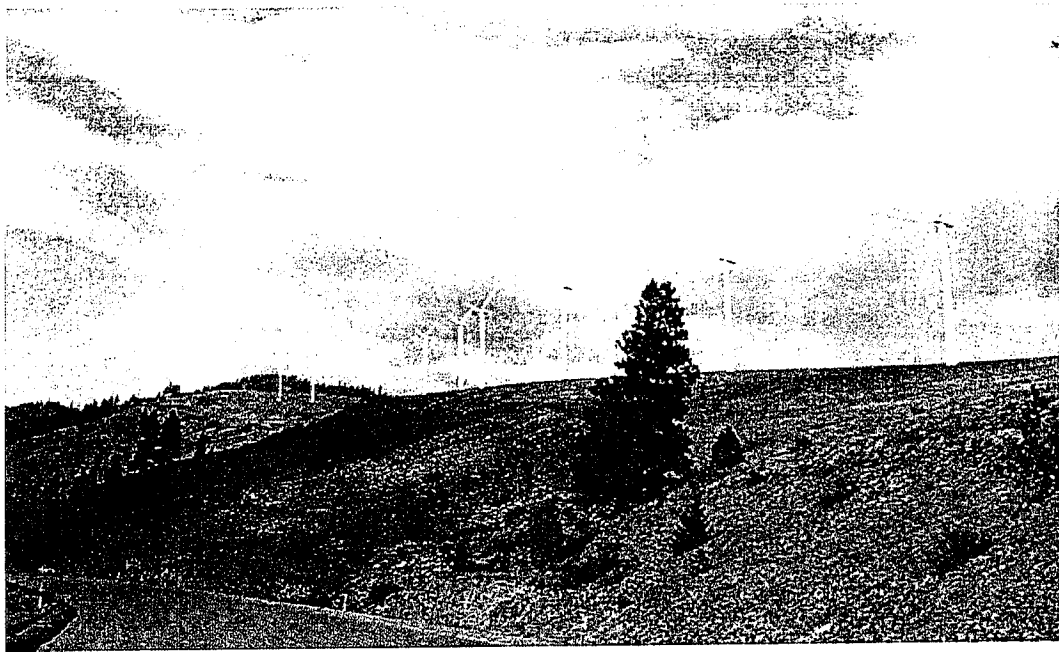
Under the Swauk Valley Ranch alternative, construction activity and operating turbines would be visible from I-90, SR 10, and from nearby residences. Although information from individual viewpoints is not available for this alternative, it is expected that high-level impacts would result from this alternative due to its location.

During project operations, the visual quality of expected future views would be affected by the size, color, and arrangement of the turbines. The additional impact of experiencing the turbine's strong vertical forms across the wide-open, horizontal space would affect rural residences. Overall, development of a wind farm on Swauk Valley Ranch would significantly change the aesthetic character of the local landscape.

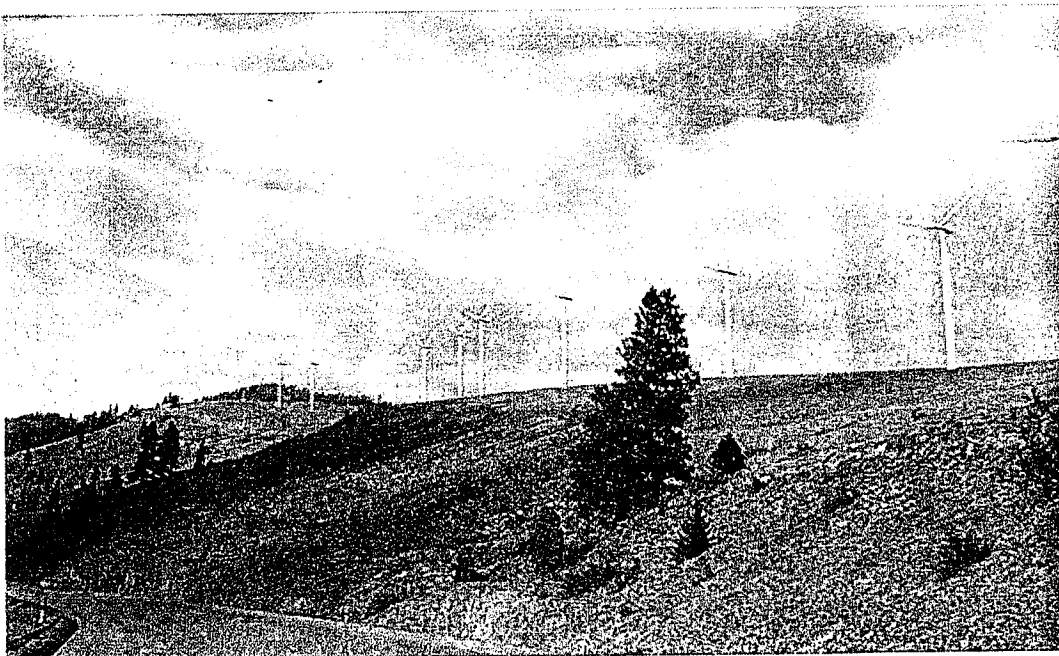
The project would also have to comply with applicable FAA lighting requirements. The number of turbines requiring FAA lighting has not been evaluated at this time. Nighttime lighting of turbines and facilities would also be required. The required aviation marking lights would result



**Figure 3.9-16: Comparison of a hypothetical simulated view with neutral grey and brown turbines.**



Neutral grey turbines.



Brown Turbines

in significant additional impacts on nearby residents and passing motorists. Flashing red lights at night would be visible from I-90, SR 10, and nearby residences. Security lighting at an O&M facility and a project substation would have minimal impact on the nighttime visual environment if it were tied to motion sensors. Blade glint or glare from sunlight reflecting off moving blades could possibly be an annoyance to potential viewers late in the day.

### Alternative 2: Springwood Ranch

Construction of the Springwood Ranch alternative would have a temporary but moderate visual impact on views from nearby residences and roads in the Thorp Prairie area. The construction-related visual impact from more distant viewpoints would be low.

The Springwood Ranch project would have significant visual impacts during operation. This alternative would be highly visible from I-90, with turbines located in middle ground views and breaking the skyline. Similar visual impacts would occur to views from SR 10 and the Thorp Highway. The size, color, and arrangement of the turbines would affect the visual quality of expected views. The additional impact of experiencing the turbine's strong vertical forms across the wide-open, horizontal space would affect rural residences. From all views, the turbine arrangement would appear cluttered and overwhelming because it would be unrelated to a topographic or geometric order, and would include many turbines in a continuous cluster (Gipe 2002). Overall, development of a wind farm on Springwood Ranch would significantly change the aesthetic character of the local landscape, especially as viewed from I-90, and high-level impacts would be expected.

The required aviation marking lights would result in significant additional impacts on nearby residents and passing motorists. Flashing red lights at night would be visible from I-90, the Thorp Highway, and SR 10, as well as from residences in Thorp and the immediate vicinity. Security lighting at an O&M facility and a project substation would have minimal impact on the nighttime visual environment if it were tied to motion sensors. Blade glint or glare from sunlight reflecting off moving blades could possibly be an annoyance to eastbound drivers on I-90 late in the day.

### **No Action Alternative**

Under the No Action Alternative, the project would not be constructed or operated and the visual impacts described in this section would not occur. The No Action Alternative assumes that future development would comply with existing zoning requirements for the project area that is zoned Agriculture-20 and Forest and Range. According to the County's Zoning Code, the Agriculture-20 zone is primarily intended for farming, ranching, and rural residences. Permitted uses in the Forest and Range zone include logging, mining, quarrying, and agricultural practices as well as residential uses (Kittitas County 1991).

The visual character of the project area would remain rural assuming that land uses would continue to follow recent trends and that no area-wide rezoning would occur in the near future. However, even under current zoning, the rural character could slowly become more urban if large parcels are subdivided and residences are constructed on smaller lots.

The demand for electrical power in the region would increase and some other energy production facility would likely be constructed elsewhere in the region. The visual impacts of another facility are not predictable and would range from incompatible to acceptable depending on the type and location of the facility.

#### **3.9.4 Mitigation Measures**

##### **Proposed Action**

Mitigation of aesthetic and light and glare impacts could include a combination of methods. The goal of mitigation is to avoid, reduce, and compensate for impacts to the maximum extent practical. The most fundamental mitigation method is to completely avoid the impacts at a given location by either not constructing the project or constructing it at a different location. This option is discussed in Section 3.9.3, Impacts, No Action Alternative.

In current literature on the subject, a number of commonly accepted aesthetic and light and glare impacts are associated with wind power projects. Many of these impacts may be reduced if recommended planning and design methods are followed. The Applicant is proposing some of these impact-reduction methods, as summarized below.

- During the construction period, active dust suppression would be implemented to minimize the creation of dust clouds.
- When construction is complete, areas disturbed during the construction process would be restored to natural conditions.
- The wind turbine towers, nacelles, and rotors used would be uniform in size and design throughout the project.
- The turbines would have neutral gray finish to minimize contrast with the sky backdrop. Because the turbines are most frequently seen against the sky, particularly in close-range views where visual concerns are the greatest, the gray finish is the most effective choice for minimizing project aesthetic impacts.
- A low-reflectivity finish would be used for all surfaces of the turbines to minimize the reflections that can call attention to structures in a landscape setting.
- Because of the prevailing wind conditions and the high level of reliability of the equipment being used, the rotors would be turning approximately 80-85% of the time, minimizing the amount of time that turbines would appear to be not operating.
- The small cabinets containing pad-mounted equipment that would be located at the base of each turbine would have an earth tone finish to help them blend into the surrounding ground plane.
- The only exterior lighting on the turbines would be the nighttime aviation warning lighting required by the FAA. The warning lighting would be the minimum required intensity to meet the most recently adopted FAA standards. It is anticipated that daytime lighting of the turbines will not be required.
- Most of the project's electrical collection system would be buried.
- The 1.2-mile aboveground segment of the electrical collection system would include wood poles, low-reflectivity conductors, and nonreflective insulators. The aboveground segment would be located along two sets of existing overhead high voltage transmission lines.

- To the extent feasible, existing road alignments would be used to provide access to the turbines, minimizing the amount of additional surface disturbance required. The roads would have a gravel surface and would have grades of not more than 15% to reduce unsightly soil erosion.
- The O&M facility would have a low-reflectivity earth tone finish to reduce visual contrast with the surrounding landscape.
- The colors of the asphalt and gravel used for circulation and parking areas at the O&M facility would be selected to minimize contrast with the site's soil colors.
- Outdoor night lighting at the O&M facility and substations would be the minimum necessary for safety and security. All lights would be shielded to reduce offsite light trespass.
- All substation equipment would have a low-reflectivity neutral gray finish to reduce visual impact.
- All insulators in the substations and on takeoff towers would be nonreflective and nonrefractive.
- The control buildings located at each substation would have a low-reflectivity earth tone finish.
- The chain-link fences surrounding the substations would have a nonreflective, dark finish to reduce their contrast with the surroundings.
- In the areas surrounding the O&M facility and substations, naturalistic groupings of indigenous trees and shrubs would be established to provide partial screening and to help visually integrate the facilities into the landscape.
- An information kiosk and public viewing area would be constructed near the proposed O&M facility off Bettas Road. Signs would be provided to direct tourists to this viewing area (see Chapter 2). There is evidence from viewer survey results that people who have an understanding of the technology and characteristics of wind energy facilities are less likely to find views of turbines in the landscape objectionable.

During EIS scoping, concerns were raised about the project's aesthetic impacts. It was suggested that the County impose scenic setbacks from US 97 to protect the project area's viewshed.

Other commenters requested that the project compensate for lost sleep or loss of enjoyment of property caused by the proposed turbine lighting. Specific types of mitigation include methods to mitigate for light pollution at residences that do not have window coverings and methods to shield or somehow create a visual barrier between the tower lights and nearby residences. However, as noted below, attempts to screen or buffer views of the wind turbines should be carefully examined because a failed attempt to screen the turbines could have a greater negative impact than no attempt at all.

A number of additional mitigation measures included in the Draft EIS have been reviewed. The implementation of these measures was not deemed feasible, nor would it offer any guarantees in offsetting the visual impacts of the project. In particular planting vegetation barriers is not feasible given their probable low survival rate in the arid nature of the region. The applicant has already indicated that only a single type and size of turbine would be selected for the entire project. Foundations for turbines are generally very low profile, and must be constructed to meet industry safety standards; placing height limitations on this turbine component is necessary. Finally, the acquisition of conservation easements to mitigate visual impacts was also determined

not feasible because use the Applicant may not be able to acquire easements to appreciably mitigate the biggest impacts, and there is no practical means to gauge the potential effectiveness of this mitigation measure.

## **Offsite Alternatives**

### **Alternative 1: Swauk Valley Ranch**

Mitigation measures for the Swauk Valley Ranch alternative would be similar to those proposed by the Applicant for the proposed action. Mitigation measures implemented could include dust suppression and restoration related to construction, use of neutral colors and nonreflective finishes on project facilities to reduce contrast with surrounding areas, minimum lighting to meet FAA regulations and security concerns, location of electrical facilities underground, public education, vegetative screening, and other uniform design features. Additional mitigation measures appropriate to the specific project site could also be proposed. Some of those measures could be published recommendations from current literature about wind power project aesthetic impacts.

### **Alternative 2: Springwood Ranch**

Mitigation measures for the Springwood Ranch alternative would be similar to those proposed by the Applicant for the proposed action and as described for the Swauk Valley Ranch alternative.

## **3.9.5 Significant Unavoidable Adverse Impacts**

Much of the public testimony and written comments received on the proposed project reflects that for many viewers, the presence of the wind turbines represents a significant unavoidable adverse impact because it significantly alters the appearance of the rural landscape over a large area of the Kittitas Valley. The constant flashing of lights on the tops of turbines would similarly be considered a significant unavoidable adverse impact. For purposes of this analysis, the term "significant" is defined as levels of visual impact that are rated "moderately high" to "high" from any given viewpoint. Definition of the term "significant" in this context, however, is subjective and depends on many factors. For example, the degree to which impacts are adverse depends on the viewer's location and sensitivity and the impact on view quality. In the final analysis, it is the comparative number of viewers most affected by the project that determines the overall impact. A project that significantly affects a small number of viewers may be offset by the fact that it may have a relatively low impact on a large number of viewers.